

# **AGREEMENT BETWEEN THE COUNCIL OF MINISTERS OF THE REPUBLIC OF ALBANIA AND THE GOVERNMENT OF THE UNITED ARAB EMIRATES FOR INVESTMENT PROTECTION AND PROTECTION**

The Council of Ministers of the Republic of Albania and the Government of the United Arab Emirates (hereinafter collectively referred to as the "Contracting Parties"), wishing to create favorable conditions for further promotion of investments by investors of one Party in the territory of the other Party; and the mutual protection of such investments made in accordance with the laws and regulations of the host Contracting Party will lead to the promotion of individual business initiatives and increase the welfare of both Parties, having agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. (a) The term "investment" means any asset invested by the investor of one of the Contracting Parties in the territory of the other Contracting Party in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made and in particular, but not exclusively, includes:

i) Movable and immovable property, as well as any property in rem, such as: mortgage, mortgage, lien or usufruct;

ii) Shares, securities, bonds, loans and any similar forms of participation of a company;

iii) Rights or claims for money or for any performance under the contract that have a financial or economic value;

iv) Intellectual property rights, goodwill, technical processes, expertise, copyright, trademarks, trade names and patents, in accordance with the relevant laws of the respective Contracting Parties;

v) Any right granted by law, contract or due to any license or permit granted under the law, natural resources will not be covered by this Agreement;

vi) The term "investment" does not include a claim arising out of:

a) a commercial contract for the sale of goods and services by a national or company of a Contracting Party;

b) extension of credit in connection with commercial transactions, such as trade finance. Any change in the form in which assets are invested or reinvested does not affect their nature as an investment, provided that the investor obtains legal authority from the competent authorities of the receiving Contracting Party.

b) "Investor" means any national or company of a Contracting Party:

i) "Citizen" means a natural person who is a national of a Contracting Party in accordance with its applicable law;

ii) "Company" means any legal person or other organization organized under the laws of a Contracting Party;

c) The term "territory" means:

a) In relation to the Republic of Albania: the territory under the sovereignty of the Republic of Albania, including the territorial waters and the airspace above them, as well as the maritime space and the continental shelf, over which the Republic of Albania exercises, in accordance with national laws and regulations and international laws, its legal and sovereign rights.

b) In relation to the United Arab Emirates: the territory of the United Arab Emirates, which is under their sovereignty, as well as the space outside the territorial waters, airspace and underwater areas, over which the United Arab Emirates exercises sovereignty and jurisdiction over any activity that takes place waters, seabed, their subsoil, in connection with exploration

for the exploitation of natural resources for the sake of their law and international law.

d) "Benefits" means income derived from an investment and includes, in particular, but not exclusively, profits, dividends, interest, capital gains, royalties, patent fees, license fees and other fees. The reinvested benefits will enjoy the same treatment as the initial investment.

2. The term "foreign exchange usable" means any currency that is widely used to make payments for international transactions and that is widely exchanged in major exchange markets.

## **Article 2. Object of the Agreement**

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, made either before or after the entry into force of this Agreement, but shall not apply to any dispute relating to an investment arising before the entry into force of this Agreement. nor for any claim / claim that has been settled prior to the entry into force of this Agreement.

## **Article 3. Investment Promotion**

1. Each Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Party to make the investment in its territory and shall accept such investment in accordance with its laws and regulations.
2. The Contracting Parties shall encourage and facilitate the creation and establishment of appropriate legal entities by investors in order to establish, develop and implement investment projects in various sectors of the economy, as may be permitted by the laws and regulations of the receiving Contracting Party.
3. Each Contracting Party shall endeavor to take, within its territory, all necessary measures which may be applicable under the domestic law of the receiving State and may provide appropriate facilities, incentives and other forms of encouragement for investments made by investors of the other Contracting Party.

## **Article 4. Investment Protection**

1. Investments by investors of each Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party, in accordance with the provisions of national law of the receiving Contracting Party. Under this Agreement and the rules applicable to international law, neither Contracting Party shall in any way impede, through arbitrary or discriminatory measures, the administration, maintenance, use, enjoyment or disposition of investments.
2. Each Contracting Party shall endeavor, as far as possible, to make public all laws, regulations, policies and procedures pertaining to or directly affecting investments in the territory of the investors of the other Contracting Party;
3. Each Contracting Party shall, in accordance with its applicable laws and regulations, guarantee investors of the other Contracting Party the right of access to its courts, agencies and administrative courts and any other body exercising decision-making authority.
4. In the event of liquidation of an investment, the proceeds from the liquidation shall be given the same forms of protection and treatment as the initial investment, including those granted under Article 6 below.

## **Article 5. Performance Requirements**

Neither party may decide or enforce any of the following requirements:

- a) to export a certain level or percentage of goods;
- b) reach a certain level or percentage of local capacity;
- c) technology transfer;
- d) to buy, use or give priority to goods produced or offered in its territory;
- e) to purchase goods or services from a person in its territory.

## **Article 6. Treatment of Investments**

1. In accordance with the applicable laws and regulations, each Contracting Party shall guarantee, at all times, the investments made in its territory by the investors of the other Contracting Party, fair and equal treatment. This treatment will not be less favorable than that given to the investments of its investors or investors of any Third Party, whichever is more favorable.

2. Each Contracting Party shall provide investors to the other Contracting Party with respect to the compensation, transfer, administration, use, enjoyment or disposition of their investments, a treatment no less favorable than that which allows investments made by its own investors or by investors of any Third Party, whichever is more favorable.

3. Notwithstanding the provisions of any Agreement (Bilateral Investment Agreement (BIT)) that the Contracting Parties have signed with other States before or after the entry into force of this Agreement. The Most Favored State (MFN) clause will not apply to procedural or judicial matters.

4. However, the provisions of this Article shall not be construed as obliging a Contracting Party to deprive investors of the other Contracting Party of the benefits of any treatment, preference or privilege arising from:

a) any customs union, economic union, free trade area, monetary union or other form of regional economic arrangement or similar international agreement to which each of the Contracting Parties is or may become a party;

b) any international or regional agreement or any other matter relating in whole or in part to taxation;

c) each Contracting Party shall retain the right to apply and to make exceptions to the national treatment of foreign investors and their investments, including investments.

## **Article 7. Direct Contract between the Government Entity and the Investor**

Each Contracting Party or its local government or designated entities or agencies may draw up with an investor the other Contracting Party, an investment agreement which shall govern the specific legal relationship relating to the investment of the investor in question. However, breach of contract does not imply breach of this Agreement.

## **Article 8. Compensation for Damage or Loss**

1. When investments made by investors of either Contracting Party suffer losses due to war or armed conflict, revolution, a state of national emergency, revolt, insurrection or rebellion or any other event similar to the territory of the other Contracting Party, they shall be granted treatment by the other Contracting Party with respect to restitution, indemnification, compensation or any other settlement is less favorable than that of the Contracting Party to its investors or to the investors of any Third Party, whichever is more favorable.

2. Notwithstanding paragraph 1 of this Article, investors of a Contracting Party who, in one of the events referred to in that paragraph, suffer damage or loss in the territory of the other Contracting Party arising from:

a) the requisition of investments or their property by its forces or authorities; or

b) the destruction of investments or their property by its forces or authorities which was not caused by fighting or was not requested due to the need of the situation. They will be provided with effective and adequate compensation for damage or loss suffered during the period of outstanding claim or as a result of destruction of property.

Payments deriving from it will be in a usable currency and will be freely transferred without delay.

## **Article 9. Expropriation**

1. (a) Investments made by investors of a Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated, expropriated or directly or indirectly subject to measures having the same nationality, such as freezing or blocking, possession (hereinafter jointly referred to as expropriation) by the other Contracting Party, except for public reasons relating to the internal needs of that Contracting Party and against prompt sufficient and efficient compensation provided that such measures are taken on a non-discriminatory basis and in accordance with procedures established by law.

b) This compensation will have the present value of the expropriated investment and will be determined and calculated on the basis of the fair value of the expropriated investment market at the time, immediately before the expropriation took place or when the planned expropriation was made public, whichever comes first (hereinafter referred to as "date of evaluation"). This compensation will include interest in the prevailing market value, although in no case less than the

prevailing LIBOR six-month interest rate or equal to, from the date of expropriation until the date of payment.

c) When the fair market value referred to above cannot be easily determined, compensation will be determined on an equitable basis, taking into account all relevant factors and circumstances, such as: invested capital, nature and duration of investment, replacement value, balance sheet value and reputation. The amount of compensation to be determined at the end will be paid immediately to the investor in a freely convertible currency and will be allowed to be freely transferred without delay.

2. Without prejudice to his rights under Article 10 of this Agreement, the investor directly affected, under the law of the Contracting Party conducting the expropriation, shall consider, through the judiciary or other independent authorities of that Party, his case and the assessment of his investment in accordance with set out in paragraph 1. The Contracting Party carrying out the expropriation shall make every effort to ensure that this review is carried out properly.

3. When a Contracting Party expropriates the assets of a company established under the law applicable in all parts of its territory and where the investors of the other Contracting Party own shares, securities, loans, or other rights of interest, it guarantees that the provisions of paragraph 1 of this apply to the extent necessary to ensure equitable and equitable compensation in respect of their investments for such investors of the other Contracting Party holding such rights or interests.

## **Article 10. Transfer of Payments Related to Investments**

1. Each Contracting Party shall allow investors of the other Contracting Party the transfer of payments relating to an investment within and outside its territory, including the transfer of:

- a) initial capital and any additional capital for holding, administering and developing investments;
- b) benefits;
- c) payments under a contract, including amortization of initial and accrued interest payments, made under a loan agreement;
- d) fees and charges referred to in Article 1, paragraph 1, letter "d";
- e) proceeds from the sale or full liquidation of an investment portion, including shares;
- f) income and other remuneration of personnel engaged from abroad in connection with investments;
- g) payments for compensation according to articles 8 and 9;
- h) the payments referred to in Article 11;
- i) payments arising from the settlement of disputes; and d) revenues and profits of airlines operating in international traffic.

2. Transfers of payments, according to paragraph 1, shall be made without delay or impediment and, except in cases of in-kind payments, in a freely convertible currency.

3. Transfers will become the prevailing value at the moment of exchange in the market on the date of the transfer for the currency to be transferred. In case of absence of a foreign exchange market, the value will be applied if of the International Monetary Fund or the exchange rate for the currency conversion of special drawing rights or US dollars, whichever is more favorable to the investor.

## **Article 11. Subrogation**

1. If a Contracting Party, the agency designated by it or another company or enterprise established in that Contracting Party, other than the investor (Indemnifying Party), makes a payment under an indemnity or guarantee against a non-commercial risk borne by the other party in relation to investments in the territory The Contracting Party (host Contracting Party), or otherwise receives a share of all the rights and claims of this investment as a result of non-payment in full of the investor, the receiving Contracting Party will recognize: a) the transfer to the Indemnifying Party law or through legal transactions a part or all rights and claims arising from such an investment;

b) that the Indemnifying Party has the right to exercise these rights and claims and to assume all the obligations related to the investment through replacement, to the same extent its possessing predecessor or the initial investor; and

c) the replaced claims or rights shall not exceed the initial rights or claims of this investor.

2. The Indemnifying Party shall be entitled to all the circumstances, in respect of: a) the same treatment in respect of the rights and claims received and the obligations assumed for the purpose of the transfer referred to in paragraph 1 above; and b) any payment made in respect of those rights and claims. Just as the initial investor had the right to receive, for the purpose of this Agreement, in respect of the investment in question.
3. Notwithstanding Article 8, any payment received in the national currency by the Indemnifying Party pursuant to the rights and claims received shall be freely available to the Indemnifying Party for the purpose of covering any expenses incurred in the territory of the receiving Contracting Party.
4. Notwithstanding the provisions of paragraph 1 of this Article, replacement shall take place by each of the Contracting Parties only after the prior written approval of the Contracting Party in the territory of which the investment is made.

## **Article 12. Settlement of Disputes between the Contracting Party and the Investor**

1. Any dispute which may arise between the Contracting Party and the investor of the other Contracting Party concerning the investments of that investor The other Contracting Party shall be settled amicably by negotiation, upon written request by the investor for the amicable settlement of a dispute. The host country will respond immediately to this request.
2. The request for the amicable solution mentioned above will have the following content:
  - a) the name and address of the complaining investor and, where the claim is made by an investor of a Contracting Party for the accounts of a legal person, the name and address of the legal person;
  - b) the provisions of this Agreement, which are alleged to have been violated, and any other relevant provisions;
  - c) the issues and the factual basis for the claim; and
  - d) the compensation required and the approximate amount of damages claimed.
3. If such a dispute cannot be resolved within a period of 6 (six) months from the date of the request for amicable settlement, the investor may file the dispute after giving written notice of his intention to file a claim with one of the following institutions:
  - a) the competent court or the administrative court of the respondent Contracting Party; or
  - b) conciliation or arbitration established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or
  - c) arbitration under the rules of the International Chamber of Commerce (ICC); or
  - d) arbitration under the rules of the International Center for the Settlement of Investment Disputes (ICSID), established by the Convention for the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), opened for signature in Washington, DC, on March 18, 1965; or e) any other conciliation or arbitration forum accepted by the investor and the Contracting Party in dispute.
4. A Contracting Party shall not claim, defense, counterclaim, direct compensation or for any other reason that the indemnity or any other compensation for all or part of the claimed damages has been received or will be obtained in accordance with an indemnity, guarantee or insurance contract.
5. At any stage, during the period of reflection or court proceedings, the parties to the dispute shall withdraw the matter if they reach an agreement to settle the dispute amicably.
6. The decision shall be binding and shall not be subject to any appeal or settlement other than those provided for in the rules of arbitration forums referred to in paragraphs (b) to (e) of this Article. The decision shall be implemented without delay by the Contracting Party as a final decision under the domestic law of the receiving State.

## **Article 13. Settlement of Disputes between the Contracting Parties**

1. The Contracting Parties shall, as far as possible, resolve any dispute relating to the interpretation or implementation or execution of this Agreement through consultations or other diplomatic channels, as may be agreed between the Contracting Parties.
2. If the dispute has not been resolved within six months from the date on which such consultations or other diplomatic channels are requested by one of the Contracting Parties and unless the Contracting Parties agree otherwise in writing,

either Contracting Party may, by written notification to the other Contracting Party, file the dispute. a special arbitral tribunal, in accordance with the following provisions of this Article.

3. The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one member and both such members shall agree on the nationality of a third country in which both Contracting Parties have diplomatic relations, as chairman of the arbitral tribunal to be appointed by the Contracting Party. These members shall be appointed within two months and the chairman within four months from the date on which one of the Contracting Parties has informed the other Contracting Party that it intends to deposit the undress at a arbitral tribunal.

4. If the periods set out in paragraph 3 above have not been complied with, either Contracting Party may, in the absence of any other solution, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of one of the Contracting Parties or if he is otherwise prohibited from performing this function, the Vice-President of the International Court of Justice shall be invited to make the necessary appointments. If the Vice-President of the International Court of Justice is a national of one of the Contracting Parties or if he is also prohibited from performing this function, the senior member of the International Court of Justice who is not a national of either Contracting Party shall be invited to make the necessary appointments. .

5. The arbitral tribunal shall reach its decision by a majority of votes. This decision shall be taken in accordance with the provisions of this Agreement and the applicable rules of international law and shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the member of the arbitral tribunal appointed by the Contracting Party, as well as the costs of representing it in the arbitration proceedings. The costs of the chairman, as well as any other costs of the arbitration process shall be borne in equal parts by both Contracting Parties.

However, the arbitral tribunal may, in its discretion, order that most or all of these costs be borne by one of the Contracting Parties. In all other respects the arbitral tribunal shall determine its own procedures.

## **Article 14. Entry and Stay of Staff**

The Contracting Parties, in accordance with their laws and regulations, shall favorably consider applications for entry and stay of persons of one of the Contracting Parties in connection with an investment.

## **Article 15. Enforcement of other Rules**

Notwithstanding paragraphs 1 and 3 of Article 6, whether the provisions of the law of any of the Contracting Parties or the obligations under international law which currently exist or set forth between the Contracting Parties in addition to this Agreement contain rules, whether general or specific, relating to investments and activities. from the investors of the other Contracting Party a more favorable treatment than that provided by the Agreement. These rules, in so far as they are more favorable, shall take precedence over this Agreement.

## **Article 16. Applicable Law**

Except as otherwise provided in this Agreement, all investments shall be governed by the laws in force in the territory of the Contracting Party in which those investments are made.

## **Article 17. Amendments**

The Agreement may be amended at any time after an initial period of ten years from the date of its entry into force, at the request of one of the Contracting Parties. The requesting Contracting Party shall file a written request, explaining to the other Contracting Party the reasons for the change.

## **Article 18. Consultation**

Each Contracting Party shall consult the other Contracting Party with respect to any dispute relating to its interpretation, application and execution or any other dispute, including investment dispute, and the other Party shall respond promptly.

## **Article 19. Denial of Benefits**

The benefits of this Agreement shall be denied to an investor's Contracting Party who acquires ownership or control of an investment, except for the purpose of lodging an application for arbitration or through national planning where the investor has his investment structures through intermediary states for the sole purpose of profiting from it. Agreements, including

the settlement of disputes between the investor and the state (ISDS).

## **Article 20. Entry Into Force**

Each Contracting Party shall notify the other Party that its constitutional requirements for the entry into force of this Agreement have been met and that the Agreement shall enter into force thirty days after the date of receipt of the notification in question.

## **Article 21. Duration and Termination of the Agreement**

1. This Agreement shall remain in force for a period of 10 years (ten years) and shall continue in force for a similar period or period, unless one of the Contracting Parties terminates the Agreement by giving written notice of settlement through diplomatic channels for at least six months. before the expiration of the initial period or any subsequent period.
2. With respect to investments made prior to the date on which notice of termination of this Agreement becomes effective, the provisions of this Agreement shall continue to be in force for a period of 10 (ten) years from the date of termination of this Agreement.
3. The provisions of this Agreement shall apply notwithstanding the existence of diplomatic or consular relations between the Contracting Parties.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement. Done in duplicate at Tirana, this 15th day of October 2015, corresponding to ..... in the Albanian, Arabic and English languages, all the texts are equally authentic. In the event of a change of interpretation, the English text shall prevail.

FOR THE COUNCIL OF MINISTERS OF THE REPUBLIC OF ALBANIA

FOR THE GOVERNMENT OF THE UNITED ARAB EMIRATES