

Model agreement between the Government of the Russian Federation and the Government of _____ (name of foreign state) on encouragement and mutual protection of capital investments (as amended on 11 April 2002)

The Government of the Russian Federation and the Government of _____ (name foreign state) _____, hereinafter referred to as the Contracting States Parties,

desirous of creating favourable conditions for capital investments by investors of one Contracting Party in the territory of the other Contracting Party, recognising that the encouragement and mutual protection of capital investments on the basis of this Agreement will stimulate the inflow of capital and contribute to the development of mutually beneficial trade, economic, scientific and technical cooperation, have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement, the following terms shall mean:

(a) 'investor' (in relation to each of the Contracting Parties):

any natural person who is a national of a State of that Contracting Party;

any legal entity created or established under the laws of that Contracting Party;

b) 'investments' - all types of property valuables which are invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the legislation of the latter, and in particular:

movable and immovable property;

shares, contributions and other forms of participation in the capital of commercial organisations;

the right of claim for funds invested for the creation of economic value or under contracts of economic value related to capital investments;

exclusive rights to intellectual property objects (copyrights, patents, industrial designs, models, trademarks or service marks, technology, information of commercial value and know-how);

business rights granted by law or contract, including, but not limited to, those related to the exploration, development, extraction and exploitation of natural resources.

No change in the form of an investment shall affect its qualification as an investment unless such change is inconsistent with the applicable laws of the Contracting Party in whose territory the investment is made;

c) 'income' means funds derived from an investment, and in particular profits, dividends, interest, licence fees and other remuneration;

d) 'territory of the Contracting Party' - the territory of the Russian Federation or the territory of _____, (name of the foreign state) as well as their exclusive economic zones and continental shelf defined in accordance with the UN Convention on the Law of the Sea (1982);

e) 'legislation of the Contracting Party' - laws and other regulatory legal acts of the Russian Federation or laws and other regulatory legal acts of _____. (name of the foreign state)

Article 2. Protection of Investments

1. Each Contracting Party shall endeavour to create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall allow such investments in accordance with its legislation.
2. Each Contracting Party shall ensure, in accordance with its legislation, full protection in its territory of investments by investors of the other Contracting Party.

Article 3. Treatment of Investments

1. Each Contracting Party shall ensure in its territory equitable treatment of investments of investors of the other Contracting Party with respect to the management and disposal thereof.
2. The treatment referred to in paragraph 1 of this Article shall not be less favourable than the treatment accorded to investments by its own investors or by investors of any third State, whichever is considered by the investor to be more favourable.
3. Each Contracting Party shall reserve the right to apply and introduce exemptions from national treatment to foreign investors and their investments, including reinvested investments.
4. The treatment accorded under paragraph 2 of this Article shall not extend to advantages which a Contracting Party is granting or will grant in the future:

in connection with participation in a free trade area, customs union or economic union;

on the basis of double taxation agreements or other taxation arrangements;

in accordance with the agreements of the Russian Federation with the states that were formerly part of the former Union of Soviet Socialist Republics.

5. Without prejudice to the provisions of Articles 4, 5 and 8 of this Agreement, the Contracting Parties shall accord to each other treatment no more favourable than that which they accord to each other under the obligations undertaken under the Agreement Establishing the World Trade Organization (WTO) of 15 April 1994, including obligations under the General Agreement on Trade in Services (GATS), as well as any other multilateral agreement which may be reached with the participation of both Contracting Parties and which will relate to the treatment of capital goods.
6. To the extent that the matters covered by this Agreement are governed by the Partnership and Cooperation Agreement establishing a partnership between the Russian Federation, on the one hand, and the European Communities and their Member States, on the other hand, of 24 June 1994, this Partnership and Cooperation Agreement shall apply to them.

Article 4. Expropriation

1. Investments of investors of one Contracting Party made in the territory of the other Contracting Party may not be subjected to measures of compulsory withdrawal amounting to expropriation or nationalisation (hereinafter referred to as expropriation), except where such measures are taken in the public interest in accordance with procedures established in accordance with the legislation of that other Contracting Party, are non-discriminatory and entail the payment of a prompt, adequate and adequate compensation to the investors of the other Contracting Party.
2. Compensation shall correspond to the market value of the investment expropriated, calculated on the date on which the actual or impending expropriation became officially known. Compensation shall be paid without delay in freely convertible currency and shall be freely transferable from the territory of one Contracting Party to the territory of the other Contracting Party. From the time of expropriation until the compensation is paid, the amount of compensation shall bear interest at a commercial rate established on a market basis, but not below the LIBOR rate for six-month dollar loans.

Article 5. Compensation

Investors of a Contracting Party whose investments are damaged in the territory of the other Contracting Party as a result of war, civil strife or other similar circumstances shall be accorded, in respect of restitution, indemnity, compensation or other types of settlement, treatment most favourable to that which the latter Contracting Party accords to investors of a third State or to its own investors in respect of measures which it takes in connection with such damage.

Article 6. Transfer of Payments

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, after they have fulfilled all tax

obligations, the unhindered transfer abroad of payments in connection with investments, and in particular:

a) income;

b) funds paid in repayment of loans and credits recognised by both Contracting Parties as investments, as well as interest accrued;

c) funds received in connection with the partial or complete liquidation or sale of investments;

d) the compensation provided for in Articles 4 and 5 of this Agreement;

e) wages and other remuneration received by the investor and by natural persons of the other Contracting Party who are authorised to work in connection with the investment in the territory of the first Contracting Party.

2. Transfers of payments shall be made without delay in freely convertible currency at the exchange rate applicable on the date of transfer in accordance with the currency legislation of the Contracting Party in whose territory the investment is made.

Article 7. Subrogation

A Contracting Party or an authority authorised by it which has made a payment to an investor on the basis of a guarantee of protection against non-commercial risks in connection with his investment in the territory of another Contracting Party shall be able to exercise, by way of subrogation, the rights of the investor to the same extent as the investor himself. Such rights shall be exercised in accordance with the law of the latter Contracting Party.

Article 8. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Disputes between one Contracting Party and an investor of the other Contracting Party arising in connection with an investment by that investor in the territory of the first Contracting Party, including disputes concerning the amount, terms or procedure for the payment of compensation in accordance with Articles 4 and 5 of this Agreement or the procedure for the transfer of payments provided for in Article 6 of this Agreement, shall be settled, if possible, by negotiation.

2. If the dispute cannot be settled by negotiation within six months from the date of the request by either party to the dispute for a negotiated settlement, it may, at the option of the investor, be submitted to the competent court or arbitration of the Contracting Party in whose territory the investment has been made, or to an ad hoc arbitral tribunal in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), or to the International Centre for Settlement of Investment Disputes established in the territory of the Contracting Party in which the investment was made, or to the International Centre for Settlement of Investment Disputes established in the territory of the Contracting Party in which the investment was made.

3. The arbitral award shall be final and binding on both parties to the dispute. Each Contracting Party undertakes to enforce such an award in accordance with its law.

Article 9. Settlement of Disputes between Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall be settled by negotiation.

If a dispute is not settled by such means within six months from the commencement of negotiations, it shall, at the request of any Contracting Party, be submitted to a court of arbitration.

2. A tribunal of arbitration shall be established for each individual case, for which purpose each Contracting Party shall appoint one member of the tribunal within two months from the date of receipt of the notice of arbitration. These two members of the tribunal shall then elect a national of a third State who, with the approval of both Contracting Parties, shall be appointed president of the arbitral tribunal within one month from the date of the appointment of the other two members.

3. If the necessary appointments are not made within the time limits referred to in paragraph 2 of this Article, unless otherwise agreed, any Contracting Party may request the President of the International Court of Justice to make such appointments. If the President of the International Court of Justice is a national of a State of one of the Contracting Parties or is for other reasons unable to fulfil the said request, 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 also a national of a State of a Contracting Party or for other reasons is unable to comply with the request, a member of the International Court of Justice who is not a national of a State of either Contracting Party shall be invited to make the necessary appointments.

4. The Court of Arbitration shall render its judgement by majority vote. Such decision shall be final and binding on the Contracting Parties. Each Contracting Party shall bear the expenses of the activities of the tribunal member appointed by it and of its representation in the arbitral proceedings. The costs of the chairman of the arbitral tribunal and other expenses shall be borne equally by the Contracting Parties. The Court may, however, provide in its judgement that one of the Contracting Parties shall bear a greater share of the costs, and such a judgement shall be binding on both Contracting Parties. The Court of Arbitration shall determine its own procedure.

Article 10. Consultations

The Contracting Parties shall, at the request of either of them, hold consultations on questions concerning the interpretation or application of this Agreement.

Article 11. Application of the Agreement

This Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party after its entry into force.

Article 12. Entry Into Force and Duration of the Agreement

1. Each Contracting Party shall notify the other Contracting Party in writing of the fulfilment of the domestic procedures necessary for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last of the two notifications.
2. This Agreement shall remain in force for a period of fifteen years. After the expiration of that period, it shall be automatically renewed for successive periods of five years unless one Contracting Party notifies the other Contracting Party in writing, at least twelve months before the expiration of the relevant period, of its intention to terminate this Agreement.
3. This Agreement may be amended by mutual written consent of the Contracting Parties. Any amendment shall enter into force when each Contracting Party has notified the other Contracting Party in writing that all domestic procedures necessary for such amendment to enter into force have been completed.
4. With respect to capital investments made prior to and subject to the date of termination of this Agreement, the provisions of all other Articles of this Agreement shall remain in force for a further period of fifteen years after the date of termination.

Done at _____ '____' _____ 200__, in duplicate, in the Russian and _____ languages, both texts being equally authentic.

For the Government of the Russian Federation

For the Government

(name of the foreign State)