

# **AGREEMENT between Ukraine and the Republic of Moldova on promotion and mutual protection of investments**

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

Desiring to intensify economic cooperation on a long term basis for the mutual benefit of both States,

Intending to create and maintain favorable conditions for investments by investors of one State in another State, and

Recognizing that the promotion and reciprocal protection of investments under this Agreement will stimulate business initiatives in this area,

Agree as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" would cover any kind of asset invested in connection with economic activities by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with applicable laws and regulations of the latter and shall include, in particular, but not exclusively:

- a) movable and immovable property as well as any other rights such as mortgages, liens, pledges and similar rights;
- b) shares, stocks and debentures of legal persons or property share of these entities;
- c) the right to claim for monetary means and any obligations with economic value and associated with an investment;
- d) intellectual property rights, including copyrights, trademarks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill associated with an investment;
- e) any right conferred by law or under contract and kakerlibo licenses and permits pursuant to law, including kontsessiyi to search for, extract or exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their character as investment.

2. The term "investor" means any natural or legal person who invests in the territory of the other Contracting Party:

a) The term natural person "means any natural person having the nationality of either Contracting Party in accordance with its laws;

b) The term "legal person" means with respect to either Contracting Party:

- Any enterprise established under the existing laws of the State of each Contracting Party and which has the right to invest in the territory of the other Contracting Party;

- Any organization of individuals without legal personality but considered as a company, its company law.

3. The term "returns" means the monetary amounts yielded by an investment and shall include in particular, but not exclusively, profits, interest, capital gains, dividends, royalties, fees.

4. The term "territory" means in respect of each Contracting Party in the territory under its sovereignty and the sea and submarine areas over which that Contracting Party shall, in accordance with international law, sovereignty, sovereign rights and jurisdiction.

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

The provisions of this Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party both before and after the entry into force of this Agreement.

This Agreement may be amended or supplemented by agreement signatories.

### **Article 3. Promotion and Protection of Investments**

1. Each Party shall encourage and create favorable conditions for investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its laws and regulations.

2. Investments of investors of either Contracting Party fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

### **Article 4. National Treatment and Most Favored Nation Regime**

1. Each Party shall provide in its territory investments by investors of the other Contracting Party, which is fair and equitable and not less favorable than that it accords to investments of its own investors or investments untempered third State if it is more advantageous in accordance the laws of the Contracting Party in which investments are made.

2. Each Party shall in its territory accord to investors of the other Contracting Party in relation to the management, maintenance, use, enjoyment or disposal of their investment, treatment which is fair and equitable and not less favorable than that it accords to its own investors or investors of any other State that it is more favorable.

3. The provisions of paragraphs 1 and 2 shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party arising from:

a) any customs union or free trade area or a monetary union or similar international agreements that affect the investment regime of cooperation or other forms of regional cooperation, to which either Contracting Party is or may become a party;

b) any international agreement or arrangement relating wholly or mainly to taxation.

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

1. When investments by investors of either Contracting Party suffer losses owing to war, armed conflict, state of national emergency, revolt, insurrection, riot or other similar events in the territory of the other Contracting Party, they shall be accorded by the latter Contracting Party treatment, as regards restitution, refunds, compensation or other settlement, not 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 events referred to in that 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 authorities which was not caused in combat action or was not required by the necessity of the situation, shall be accorded just and adequate compensation for the losses sustained during the period of requisitioning or as a result of the destruction of property. Resulting payments shall be freely transferable in freely convertible currency without delay.

### **Article 6. Expropriation**

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for the public interest. The expropriation shall be carried out under due process of law, without discrimination and accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment when the expropriation or impending expropriation became, generally known to include interest from the date of expropriation at a commercially motivated rate made without delay and shall be deemed to have effectively realizable and freely transferable in a freely convertible currency.

2. The investor will have the right to go to court or arbitration to protect its interests, and evaluate its 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 that received the status of the company, or constituted under the applicable law in any part of its territory and in which investors of the other Contracting Party own shares.

## **Article 7. Transfers**

1. The Contracting Parties shall guarantee the transfer of payments related to investments and returns in accordance with the current legislation of the Parties. Transfers shall be made in freely convertible currency or in the currency in which the investment was made, without any restriction and undue delay. Such transfers include in particular, but not exclusively:

- a) capital and additional money to maintain or increase investments;
- b) profits, interest, dividends and other current income;
- c) funds in repayment of loans positions;
- d) royalties or fees;
- e) proceeds of sale or liquidation of the investment.

2. For the purposes of this Agreement will be used courses, which are installed under the legislation of the Parties and are effective for the current transactions at the date of transfer, unless otherwise agreed.

## **Article 8. Subrogation**

1. If a Contracting Party or its designated agency makes payment to its own investors under the guarantee it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

- a) the assignment, whether under the law or pursuant to a legal transaction in that country, of any right or claim by the investor to the former Contracting Party or its designated agency, as well as the fact
- b) that the former Contracting Party or its designated agency is entitled by virtue of subrogation to the rights and claims of that investor and takes over the obligations related to the investment.

2. Received by virtue of subrogation rights or claims shall not exceed the rights and claims of the investor.

## **Article 9. Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the 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 from the date of submission of the written request investor shall be entitled to submit the case:

- a) 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 the two Parties have become party to this Convention, or
- b) an arbitrator or international ad hoc arbitral tribunal established under Arbitration Rules of the United Nations 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 10. 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 mutual consultations and negotiations.

2. If the dispute can not thus be settled within six months after it began, at the request of untempered Contracting Party will be submitted to an arbitral tribunal under this Article.

3. The Arbitral Tribunal constituted for each case indyvidualnoho follows two months after receiving 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, during any of the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the 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 from discharging the said function, shall be invited Deputy Chairman to make the appointments. If you find that Deputy Chairman 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 national of either Contracting Party shall be invited to make the appointments and can not obstacles to perform the function.

5. The Arbitral Tribunal shall reach its decision by majority vote. Such decision shall be final and binding.

6. The proceedings in the Court of Arbitration will be conducted in accordance with the Rules of the International Court of Justice.

Parties may agree to modify these Rules.

## **Article 11. Application of other Rules and Special Commitments**

1. Where a matter is governed both by this Agreement and by another international agreement to which both Contracting Parties, nothing in this Agreement shall prevent either Contracting Party or any of their investors who own investments in the territory of the other Contracting Party from taking advantage of whichever rules is more favorable to his case.

2. If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party in accordance with its laws and regulations or other specific provisions of contracts is more favorable than that accorded by this Agreement, will be given more favorable.

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

1. Each Party shall notify the other of the completion of the procedures required by its law for the entry into force of this Agreement, this Agreement shall enter into force on the date of the last report.

2. This Agreement shall remain in force for a period of ten years. It shall be automatically extended for subsequent periods unless either Contracting Party at least six months before the exhaustion of the corresponding period in writing notifies the other Contracting Party of its intention to terminate the Agreement.

3. In respect of investments made prior to the termination of this Agreement, this Agreement shall remain in force for a period of ten years from the date of termination.

IN WITNESS WHEREOF, the undersigned, besides being duly authorized, have signed this Agreement.

Done in. Chisinau, 29 August 1995 in two originals, each in Ukrainian, Moldavian and Russian languages, all texts being equally authentic.

In the event of any dispute regarding the articles of this Agreement shall prevail text in Russian.