

AGREEMENT between Ukraine and the Government of Mongolia on the Promotion and Reciprocal Protection of Investments

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

Desiring to create favorable conditions and to lay the basis for investments by investors of one state in another state,

Recognizing that the encouragement and reciprocal protection of investments under this Agreement will contribute to stimulating business initiative and the development of economic cooperation between the two countries on the basis of equality and mutual benefit,

Agreed on the following terms:

Article 1. Definitions

For the purposes of this Agreement:

a) The term "investment" shall mean all property, particularly, though not exclusively, includes:

- Movable and immovable property and related property rights, such as collateral and other
- Shares, deposits, bonds and other forms of participation in companies and enterprises
- Monetary claims and claim of contractual obligations that have value,
- The right to industrial and intellectual property, including copyrights, patents, trademarks, trade names, industrial designs, trade secrets, "know-how" and "ox-gut"
- Permitted or prescribed contractual rights to carry out economic and commercial activities, including the rights to explore for, develop, extract or exploit natural resources.

Changing forms of investment property does not affect their qualification as investments.

b) "returns" means amounts yielded by investments and in particular, though not exclusively, includes profits, interest, dividends, royalties and fees,

c) "investor" means in respect of each of the Contracting Parties:

- Individuals who have the citizenship of a Contracting Party under its law,
- Companies, corporations, companies, firms, businesses, organizations and other business associations founded and registered in accordance with the applicable law in the territory

One Contracting Party and the capacity to invest in the territory of the other Contracting Party,

d) "territory":

- In respect of Ukraine - the territory over which Ukraine exercises its sovereign rights and jurisdiction in accordance with international law, including the maritime areas adjacent to the outer limits of the territorial sea,
- Relatively Mongolia - the territory of Mongolia which exercises its sovereign rights.

Article 2. Promotion and Protection of Investments

Each Contracting 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 legislation.

Investments of investors of either Contracting Party shall be granted a fair and equitable treatment and full protection and enforced security in the territory of the other Contracting Party.

Neither Contracting Party shall in no way interfere by taking unreasonable or discriminatory measures, possession, use or disposal of investments in its territory by investors of the other Contracting Party.

Each Contracting Party does not assume any obligation that it can assume relative to investments of investors of the other Contracting Party.

Article 3. Investment Regime

Each Contracting Party shall accord in its territory to investments and returns of investors of the other Contracting Party treatment no less favorable than that it accords to investments and returns of its investors or to investments and returns of investors of any third state.

Each Contracting Party shall accord in its territory to investors of the other Contracting Party regarding the possession, use and disposal of their investments treatment no less favorable than that it accords to its investors or investors of any third state.

The above principle of national treatment does not apply to special conditions applicable to foreign investors in accordance with the laws of each Contracting Party.

Article 4. Compensation

Investors of either Contracting Party whose investments in the territory of the other Contracting Party suffer damage due to war or other armed conflict, national emergency, insurrection, riot, or any other event affecting the territory of the latter, provided that the Contracting Parties concerning recovery of property, indemnification, compensation or other types of settlement treatment no less favorable than that it accords to its investors or investors of any third state. The resulting payments that must be freely transferable.

Article 5. Expropriation

Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures tantamount to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except in cases of expropriation in the public interest, in connection with the internal need that Party exercised without discrimination and is accompanied by prompt, adequate and effective compensation.

The size of such compensation should correspond to the real value of investments and determined at the time of actual decisions on expropriation. Compensation shall be paid without delay and be effectively realizable and freely transferable. An investor whose interests are affected is entitled under the law of the Contracting Party shall expropriate, submit to judicial or other independent authority of that Party of its case and determine the value of its investment in accordance with the above principles.

If either Contracting Party expropriates property companies, and other businesses based in its territory in accordance with its applicable laws, share of which belongs to investors of the other Contracting Party, it will ensure implementation of paragraph 1 of this Article within that guarantee prompt, adequate and effective compensation in respect of investments of investors of the other Contracting Party who are owners of those shares.

Article 6. Transfer of Investment Profits

Each Contracting Party in respect of investments guarantee to investors of the other Contracting Party unrestricted transfer of their investments and revenues, including:

- Income, fees for technical services, and other rewards that investors receive from the sale of investments;
- Sums belonging to investors of another Contracting Party to the full and partial liquidation or sale of investments;
- Sums intended for the repayment of loans;
- Wages received by nationals of the other Contracting Party in connection with investments carried out in the territory of the first Contracting Party;

- Sums intended for the management of investments carried out in the territory of the other Contracting Party;

- Additional capital necessary to maintain the normal functioning of the investment.

The transfers will be made without delay in the currency in which the investment was made or in any convertible currency by agreement between the investor and the Contracting Party concerned at the exchange rate acting on the date of transfer and in accordance with the procedure applicable currency regulations of the country of investment.

Article 7. Exceptions

The provisions of this Agreement regarding the provision of treatment no less favorable than that accorded to investors of either Contracting Party or any third State shall not be construed as binding one Contracting Party to extend to investors of the other Contracting Party preferential treatment, preference or privilege arising from:

a) any existing or possible future customs unions, free trade zones, zones of common tariffs, currency unions, an agreement on border trade or similar international multilateral or bilateral agreements or organizations of economic cooperation, to which is or may become one of the Contracting Parties, or

b) any international agreement or arrangement relating wholly or partly taxation or any domestic law which wholly or mainly to taxation.

Article 8. Disputes between Investors and Host Contracting Party

Disputes between an investor of one Contracting Party and the other Contracting Party as far as possible be settled amicably.

If the dispute is not settled amicably within six months from the date of the written submission claims that at the request of the parties to the dispute it will be submitted to arbitration respondent countries authorized to consider such disputes, or, if this wish any the parties to the dispute - to the tribunal to be appointed by a special agreement between the parties.

Article 9. Disputes between Contracting Parties

Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall as far as possible be resolved through diplomatic channels.

If the dispute between the Contracting Parties can not be settled in this way, at the request of either Contracting Party, it will be transferred to arbitration.

Such an arbitral tribunal constituted for each case follows. Within two months of receipt of the request for arbitration, each Contracting Party shall appoint one member of the arbitral tribunal. The two members of the arbitral tribunal then select a national of a third state that with the consent of the two Contracting Parties shall be appointed Chairman of the arbitral tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

If within the indicated period appointments have not been made, each Contracting Party may, in the absence of any other agreement, request the President of the International Court of Justice to make the appointments. If the President is a citizen of either Contracting Party or he can not with any reason to carry out the said function, the vice-chairman will be invited to make the appointments. If the Vice-President is a national of either Contracting Party or if he also can not with any reason to carry out the said function, the member of the International Court of Justice, which is following it on seniority not a national of either Contracting Party shall be invited to make the necessary appointment.

The arbitral tribunal shall decide by majority vote. Such decisions are binding on both Contracting Parties.

Each Contracting Party shall bear the expenses related to the activities of its arbitrator and its representation in the arbitration proceedings. Costs associated with the activities of the Chairman and other expenses The Contracting Parties shall bear in equal shares. However, the Court may, in its decision noted that one of the Contracting Parties shall bear most of the costs, and the ruling will be binding on both Contracting Parties. Court establish in their own arbitration procedure.

Article 10. Subrogation

If one Contracting Party or the designated authority makes payments under guarantees issued in respect of investments in the territory of the other Contracting Party, the latter will accept the transfer of the first Contracting Party or its designated authority under the law or legal actions of all rights and claims the party who received insurance compensation, and that the

first Contracting Party or the designated competent authority to exercise such rights and ensure satisfaction of such claims on the basis of subrogation to the same extent as the party that received the insurance compensation.

First Contracting Party or you assign them authority regarding acquired rights and the right to demand, as well as in respect of any payments received as a result of such rights and claims in all cases be entitled to enjoy the same regime, which enjoyed the party, which received compensation from this Agreement in accordance with specific investments and related income.

Any payments received by the former Contracting Party or the designated authority in non-convertible currency acquired as a result of her rights and claims shall be freely available first Contracting Party to cover all its expenditure incurred in the territory of the other Contracting Party.

Article 11. Application of Agreement

This Agreement shall apply to all investments made after that entry into force.

Article 12. Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law in force at that time, or established by the Contracting Parties in addition to this Agreement contain rules or general or special, entitling investments by investors of the other Contracting Party more favorable than that provided in this Agreement, such rules because of their greater profitability prevail over this Agreement.

Article 13. Entry Into Force

This Agreement shall enter into force upon signature.

Article 14. Duration and Termination of the Agreement

This agreement will be valid for ten years. After this period it will remain in force until the expiry of twelve months from the date of written notification of one Contracting Party the other Contracting Party about its termination, provided that in respect of investments made during the term of this Agreement, its provisions remain in force in respect of such investment within ten years after termination and without prejudice to the application thereafter of general international law.

In witness thereof those duly authorized by the their respective Governments, have signed this Agreement.

Signed in the city of Ulaanbaatar 5 November 1992 in two originals, each in Ukrainian and Mongolian languages, both texts being equally authentic.

GOVERNMENT OF UKRAINE

FOR THE GOVERNMENT OF MONGOLIA

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