

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC QF MACEDONIA

AND

THE GOVERNMENT OF UKRAINE CONCERNING

THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF

INVESTMENTS

The Government of the Republic of Macedonia and the Government of Ukraine, hereinafter referred to as the Contracting Parties/desiring to intensify economic cooperation to the mutual benefit of both-States, intending to create and maintain favorable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party, recognizing the need to promote and protect foreign investments with the aim to foster economic prosperity of both Contracting Parties, have agreed as

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means any kind of assets invested by an investor of one Contracting Party in the territory of the other Contracting Party provided that they have been made in accordance with the law and regulations of the latter and shall include in particular, though not exclusively:

- a) movable and immovable property as well as any other property rights, such as servitude, mortgages and other rights under the law;
- b) shares, parts or any other kinds of participation in a company;
- c) claims to money or to any performance having an economic value,
- 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 rights granted by law or agreement, such as concessions granted in accordance with applicable regulations, that regulate the performance of activities including the right to search for, process, extract and exploit natural resources.

2. The term "investor" refers to any natural or legal person of one Contracting Party that invested, is investing or intends to invest on the territory of the other Contracting Party.

a) The term "natural person" refers with regard to either Contracting Party to any natural person who is a national of the Contracting Parties.

b) The term "legal person" refers with regard to either Contracting Party to any legal person including enterprises, companies, corporations, business associations and organizations established or organized in accordance with the respective state legislation of either Contracting Party having their seat in the territory of that Contracting Party.

3. The term "return" means money yielded by an investment and in particular, profits, interest, dividends, royalties, any fees, including re-invested capital and capital gains

4. The term "territory" means the territory of the Republic of Macedonia and the territory of Ukraine, including land, water and in air, over which the State concerned, exercises, in accordance with international law, sovereign rights and jurisdiction of such areas.

5. Any change in the form of an investment, does not affect its character as an investment.

Article 2. Promotion and Admission of Investments

1. Each Contracting Party shall promote, in its territory, investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.

2. When a Contracting Party shall have admitted an investment in its territory, it shall grant in accordance with its laws and regulations the necessary permits in connection with; such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Contracting Party shall, whenever needed, endeavor to issue the necessary authorizations concerning the activities of consultants and other qualified persons of foreign nationality

Article 3. Protection and Treatment of Investments

1. Each Contracting Party shall protect within its territory, investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale and should it so happen, liquidation of such investments.

2. Each Contracting Party shall ensure fair and equitable treatment, within its territory, of the investments of the investor of the other Contracting Party. This treatment shall not be less favorable than that granted by each Contracting Party to investments made by its own investors or by investors of any third State.

3. The treatment of items 1 and 2 of this Article shall not apply to privileges which either Contracting Party accords to investors of any third State because of its membership in, or association with, a free trade area, customs union, common market or to an existing or future convention on the avoidance of double taxation, or any other international agreement or arrangement relating wholly or mainly to taxation.

Article 4. Expropriation and Compensation

1. Neither of the Contracting Parties shall take, measures of expropriation, nationalization or any other measure having the same effect against investments belonging to investors of the other Contracting Party, unless the measures are taken in the public interest, on a non-discriminatory basis and under due process of law and provided that provisions be made for effective and adequate compensation.

Such compensation shall amount to the market value of the expropriated investment immediately before the expropriation or the impending expropriation become public knowledge. The compensation for damage includes also the interest calculated on the annual LIBOR basis from the date of nationalization to the date of payment

2. The amount of compensation shall be settled in the convertible currency and freely transferable and paid without undue delay to the person entitled there to without regard to its residence or domicile.

A compensation shall be deemed to be made "without undue delay" if effected within such period as is normally required for the completion of the procedure of payment of compensation.

The said period shall commence from the date when the amount of expropriated investment was settled and may not exceed six months.

3. Investors of one Contracting Party whose investments suffer losses due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot on the territory of the other Contracting Party shall be accorded treatment provided for in Article 3e, paragraph 2 as regards restitution, indemnification, compensation or other settlement,

Resulting payments shall, whenever possible, be transferable without delay, in the convertible and freely transferable currency.

Article 5. Transfer

1. Each Contracting Party, in whose territory investments have been made by investors of the other Contracting Party, shall grant those investors a free transfer of the payments relating to these investments, particularly of:

- a) the capital and additional sums necessary for the maintenance and development of the investment;
- b) gains, profits, interests, dividends and other current income;
- c) funds in repayment of loans including interest and directly related to an investment;
- d) royalties and fees;
- e) the proceeds for a total or partial sale or liquidation of an investment;
- f) compensation provided for in Article 4;
- g) the earnings on nationals of one Contracting Party who are allowed to work in connection with an investment in the territory of the other.

2. Transfers shall be effected without delay in a freely convertible currency in the official exchange rate effective for the current transaction at the date of the transfer, in accordance with the laws and regulations of the Contracting Party in whose territory the investment was made, provided that all financial obligations toward this Contracting Party have been fulfilled.

3. The Contracting Parties undertake to accord to transfers referred to in paragraphs 1 and 2 of this Article a treatment no less favorable than that accorded to transfers originating from investments made by investors of any third State.

Article 6. Subrogation

If a Contracting Party or any agency makes a payment to any of its investors under a guarantee or insurance, it has contracted in respect of an investment, the other Contracting Party shall recognize the validity of the subrogation in favor of the former Contracting Party or agency to any right or title held by the investor.

The Contracting Party or any agency that is subrogated in the rights of an investor shall be entitled to the same rights as those of the investor and to the extent that they exercise such rights they shall do so subject to the obligations of the investor pertaining to such insured investment.

2. In the case of subrogation as defined in paragraph 1 above, the investor shall not pursue a claim unless authorized to do so by the Contracting Party or any agency thereof.

Article 7. Settlement of Disputes between One Contracting Party and an Investor of the other Contracting Party

1. Disputes between one of the Contracting Parties and an investor of the other Contracting Party shall be notified in writing, including detailed information, by the investor to the host Contracting Party of the investment. Any such dispute between the parties, should be settled by means of friendly negotiations.

2. If the dispute cannot be settled amicably within six months from the date of the written notification by which the other Contracting Party has been advised about the subject of the dispute, the investor concerned may suggest, at his own choice, that the dispute be submitted to:

- The competent court of the Contracting Party in the territory of which the investment has been made; or
- The "ad hoc" court of arbitration established under the Arbitration Rules of procedure of the United Nations Commission for International Trade Law (UNCITRAL); or
- The International Center for Settling Investment Disputes (ICSID), in accordance with the Convention for Settling Investment Disputes between States and Citizens, open for signature since 18.03.1965 in Washington D.C., if both Contracting Parties signed this Convention.

3. Once the dispute has been submitted to the competent tribunal of the Contracting Party or to international arbitration, the choice of one or the other procedure will be definitive.

4. The arbitration award shall be based on:

- The provisions of this Agreement;

- The national law of the Contracting Party in whose territory the investment was made, including the rules relative to conflicts of law;

-the rules and the universally accepted principles of international law.

5. The arbitration award shall be final and binding for the Parties to the dispute. Each Contracting Party undertakes to execute the decisions in accordance with its national law.

Article 8. Settlement of Disputes between Contracting Parties

1. Disputes between Contracting Parties regarding the interpretation and application of the provisions of this Agreement shall be settled by consultation and negotiation through diplomatic channels.

2. If both Contracting Parties cannot reach an agreement within six months after the

beginning of the dispute' between themselves, the latter shall, upon written request of either Contracting Party, be submitted to an arbitration tribunal which shall be constituted as follows:

Each Contracting Party shall appoint an arbitrator and these two arbitrators shall nominate a chairman who shall be a national of a third State, which maintains diplomatic relations with both Contracting Parties.

3. If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

4. If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

5. If in the cases specified under paragraph 3 and 4 of this Article, the President of the International Court of Justice is prevented from carrying out the said function, or if he is a national of either Contracting Party, the appointment shall be made by the Vicepresident. and if the latter is prevented or if he is national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.

6. Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure. The tribunal shall reach its award by a majority of votes.

7. The award of the tribunal is final and binding for each Contracting Party.

8. Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation in the arbitral proceedings; the costs of the chairman and remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, decide that a higher proportion of costs shall be borne by one of the Contracting Parties and this award shall be binding on both Contracting Parties.

Article 9. Application of other Rules and Special Commitments

1. Where a matter is governed simultaneously both by this Agreement and by another

International agreement to which both Contracting Parties are parties, nothing in this Agreement shall prevent either Contracting Party or any of its investors who own investments in the territory of the other Contracting Party from taking advantage of whichever rules are 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 the laws and regulations or other specific provisions of contracts is more favorable than that accorded by the Agreement, the more favorable shall be accorded.

Article 10. Consultation and Exchange of Information

Upon written request by either Contracting Party, the other Contracting Party shall agree promptly to consultations on the interpretation or application of this Agreement.

Upon written request by either Contracting Party, information shall be exchanged on the impact that the laws, regulations,

decisions, administrative practices or procedures or policies of other Contracting Party may have on investments covered by this Agreement.

Article 11. Scope of Application

The provisions of this Agreement shall apply to investments made by investors of one Contracting Party in territory of the other Contracting Party prior as well as after the entry in to force of this Agreement.

Article 12. Entry Into Force

This Agreement shall enter into force on the latter date on which either Contracting Party notifies the other that its internal legal requirements for the entry into force of this Agreement have been fulfilled.

Article 13. Duration and Denunciation

1. This, Agreement shall remain in force for a period of ten (10) years and shall continue in force thereafter for a similar period or periods unless, one year before the expiration of the initial or any subsequent period, either Contracting Party notifies the other Contracting Party of its intention to denounce the Agreement.

The notice of denunciation shall become effective one year after it has been received by the other Contracting Party.

2. In respect to investments made prior to the date when the notice of denunciation of this Agreement become effective, the provisions of this Agreement shall continue to be effective for a period of ten years from the date of denunciation of this Agreement.

Done in Kiev, on March 2 1998 in two original versions, in Macedonian, Ukrainian and English languages, all texts, being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE

GOVERNMENT OF THE REPUBLIC OF MACEDONIA

FOR THE GOVERNMENT OF UKRAINE