

# AGREEMENT

Between the Government of Ukraine and the Government of the Republic of Tajikistan on the promotion and reciprocal protection of investments

Signature Date: 06.07.2001 p.

Date of ratification: 22.05.2003.

Effective Date: 27.05.2003 p.

The Cabinet of Ministers of Ukraine and the Government of the Republic of Tajikistan, hereinafter referred to as - "Contracting Parties"

Desiring to create favorable conditions for expansion of economic cooperation between the Contracting Parties

Intending to create and maintain favorable conditions for mutual investments

Recognizing that the involvement and mutual protection of investments will contribute to strengthening of business activity and a significant increase in the contribution to the development of economic relations between the Contracting Parties

Agreed on the following:

## Article 1.

### Definition

For the purposes of this Agreement the following terms mean:

1. The term "investment" includes all types of property and intellectual values, invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with its national law and shall include, but not exclusively:
  - a) movable and immovable property (buildings, structures, equipment and other tangible assets) and related property rights such as mortgages, right of pledge, pledges and others;
  - b) cash, shares, deposits and other securities;
  - c) claims to money and the right to demand the fulfillment of contractual obligations;
  - d) intellectual property rights, including copyrights, inventions, patents, industrial designs and samples, trademarks, trade names, indications of origin, technology and "know-how" and others;
  - e) rights to economic activities, including the right to concession, resulting in the exploration, development, extraction or exploitation of natural resources and other objects of exploitation, obtained by law or contract.
2. The term "investor of a Contracting Party" means:
  - a) any natural person who is a national of a Contracting Party and the capacity under its law to invest in another Contracting Party;
  - b) any legal entity established under the applicable law of a Contracting Party, located in its territory and the capacity under its law to invest in the territory of the other Contracting Party.
3. The term "returns" shall mean amounts received as a result of investments, particularly as profits, dividends, interest, royalties, fees for licenses, patents, commissions and other fees.
4. The term "territory" means the area covered by land and water borders and sea area, seabed and its subsoil, located on

territorial waters - exclusive (maritime) economic zone over which the Contracting Party exercises sovereign rights and jurisdiction in accordance their laws, regulations and international law.

5. Legislation in respect of any Contracting Party means the law of the Contracting Party.

6. requisition - means alienation authorities of one Contracting Party or investments of investors of the other Contracting Party in the state or the public interest to carry out rescue operations in case of natural disasters, accidents, epidemics, epizootic. Requisition can be made according to the laws of the Contracting Parties on the basis of the decisions of the competent authorities of the Contracting Parties.

## **Article 2. Promotion and Protection of Investments**

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its legislation.

2. Each Contracting Party shall guarantee in accordance with its legislation full and unconditional legal protection of investments of investors of the other Contracting Party under this Agreement.

The same applies without prejudice to the provisions of paragraph 1 of this Article and to all income earned in case of reinvestment of income. The expansion, change or transformation of the investments made under the law, will not affect their character as investment.

## **Article 3. National Treatment Investment**

1. Each Contracting Party shall ensure in its territory investments made by investors of the other Contracting Party, and activities in connection with investments treatment no less favorable than that accorded to its own investors or third country, excluding the application of discriminatory that could hinder management and disposal of investments.

2. Each Contracting Party reserves the right to determine area and scope, which excluded or restricted activities of foreign investors.

3. Most-favored issued in accordance with paragraph 1 of this Article shall not apply to benefits that Contracting Party shall provide or will provide in the future:

a) in connection with participation in a free trade area, customs or economic union, monetary union or international agreement that establishes such association, or other forms of regional cooperation, to which either Contracting Party is or may become a party;

b) on the basis of an agreement on avoidance of double taxation or other agreements on taxation.

## **Article 4. Compensation for Damage**

1. Investors of one Contracting Party investing in the territory of the other Contracting Party suffered losses owing to war, armed conflict, national emergency state coup, rebellion or other similar events in the territory of the other Contracting Party will be given the latter Contracting Party treatment, in relation restitution, indemnification, compensation or other solution, not less favorable than that which the latter Contracting Party shall accord to investors of any third country.

Payments on these grounds will be implemented without delay and freely transferable.

2. Without prejudice to paragraph 1 of this Article, investors of either Contracting Party, which during the events referred to in this paragraph have suffered in the territory of the other Contracting Party from:

a) requisitioning of their property by the authorities or other Contracting Party, or

b) destruction of their property by the authorities or other Contracting Party, which was due to non-military actions necessary or required by the situation,

c) material and moral damage as a result of activity or inactivity or improper performance of state bodies, officials stipulated by law obligations in respect of the foreign investor enterprise with foreign investment, under the law of a Contracting Party shall be given the necessary restitution or adequate compensation.

Payments on these grounds will be implemented without delay and freely transferable.

## **Article 5. Expropriation**

1. Investments of investors of either Contracting Party carried out on the territory of the other Contracting Party shall not be expropriated, nationalized or subjected to measures equal consequences of expropriation (hereinafter referred to as - expropriation), but unless such measures are taken in the public interest in established legislation is not discriminatory and accompanied by payment of prompt, adequate and effective compensation.

2. The amount of compensation is determined at the time of investment or expropriation when the expropriation or the threat of it was officially known, depending on what was previously calculated on the basis of current market prices and / or reasonable estimates, confirmed by auditor or audit firm shall be paid without undue delay and freely translated from the territory of one Contracting Party in the territory of the other Contracting Party in the currency, which was made an investment, or in any other acceptable investor currency, with interest at LIBOR on the amount of compensation from the date of the right to such compensation until the its payment.

## **Article 6. Transfers**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, after fulfillment of all financial obligations in accordance with the current legislation on taxes and duties (mandatory payments) of each Contracting Party unrestricted transfer of payments in the currency of investment or in any -What other currency acceptable to investors in connection with investments, and in particular:

- a) the amounts of initial investment and additional amounts to maintain and increase investments;
- b) income;
- c) amounts received by investors in connection with private or complete realization (liquidation or sale) of investments;
- d) the sums of repayment under the investment;
- e) compensation amounts specified in Articles 4 and 5 of this Agreement.

2. Transfer payments will be made without delay, in convertible currency at the official exchange rate established on the date of transfer, under the law on currency regulation of the Contracting Party in whose territory the investments made.

## **Article 7. Subrogation**

Contracting Party or its authorized body that will make payment to the investor under the guarantee of non-commercial risks in connection with its investment in the territory of the other Contracting Party can make a subrogated rights of investors to the same extent as the investor himself. These rights will be exercised according to the legislation of the latter Party.

1. If one Contracting Party or its designated agency makes payment to its investors under guarantees provided in connection with an investment in the territory of the other Contracting Party, this other Contracting Party shall recognize:

- a) the transfer by law or pursuant to a legal transaction of any rights or claims of the investor first Contracting Party or its authorized body and
- b) the first Contracting Party or its authorized body have the right as a result of subrogation to exercise the right or to implement the requirements of the investor and assume the obligations related to the investment.

2. Subrohovani right or claim by the investor will not exceed the original rights or claims of the investor.

3. Subrohovani rights and obligations of the insured investor to also include transfer payments under Article 6 of the Agreement.

## **Article 8. Settlement of Disputes between the Contracting Parties**

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

2. If follows a dispute between the Contracting Parties can not be settled within six (6) months from the date written notice of a dispute, it is at the request of either Contracting Party it will be referred to the Arbitration Court.

3. The arbitral tribunal referred to in paragraph 2 of this article will be created on ad hoc basis for each individual case as follows:

Within two months of receipt of a written request for arbitration, each Contracting Party shall appoint one member of the Tribunal.

Within two months, two members elected by mutual agreement the third arbitrator - a third state who on approval by the Contracting Parties shall be appointed Chairman of the Tribunal.

4. If within the periods specified in paragraph 3 of this Article, the 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 (International Court of Justice) make the appointments. If the President is a citizen of either Contracting Party or if he is otherwise prevented from discharging the said function, the appointment should do Deputy Chairman. If it turns out that the Vice-President is a national of either Contracting Party or that he can not perform the said function, the appointments shall make a member of the International Court of Justice next in seniority and so that is not a national of either Contracting Parties.

5. The arbitral tribunal will make its decision on the basis of the provisions of this Agreement and on the basis of universally recognized norms of international law. The arbitral tribunal shall make its decisions by majority vote. Its decisions are final and binding nature of the Contracting Parties. The arbitral tribunal determines its own procedure.

6. Each Contracting Party shall bear the costs of its own arbitrator and its representation in the arbitration process. The costs of the Chairman and other costs will be borne in equal parts by both Contracting Parties.

At the same time, the Court may in its decision determine another distribution of costs.

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

1. Disputes between an investor of one Contracting Party and the other Contracting Party in connection with investments by investors of the first Contracting Party shall be settled as far as possible, through negotiations.

2. If the disputes referred to in paragraph 1 of this Article can not be settled through negotiation within six months, both parties to the dispute may refer the dispute to address the competent court of the Contracting Party, party to the dispute.

3. Instead of using solutions paragraph 2 of this Article investors of either Contracting Party may refer the dispute to an arbitration decision:

a) ad hoc Court of Arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);

b) the International Centre for Settlement of Investment Disputes, established pursuant to the Convention on the decision of Investment Disputes between States and others, opened for signature in Washington, DC, March 18, 1965 (Convention ICSID), when both Parties have become parties to the Convention.

4. The decision of the Arbitration Court shall be final and binding on both parties to the dispute; it will be carried out in accordance with the laws and regulations of the Contracting Parties.

## **Article 10. Application of other Rules**

If the provisions of law of either Contracting Party or obligations under international law existing at present or established in the future between the Contracting Parties in addition to this Agreement contain rules of both general and specific, entitling investments by investors of the other Contracting Parties to a treatment more favorable than is provided for by this Agreement, such rules will prevail over this Agreement to the extent in which they are more favorable.

## **Article 11. The Relations between the Contracting Parties**

Representatives of the Contracting Parties shall consult as appropriate, in respect of matters relating to this Agreement. Consultations will be held at the suggestion of one of the Contracting Parties to the time and place agreed through diplomatic channels.

## **Article 12. Application Agreement**

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

This Agreement may be amended by mutual consent of the Contracting Parties issued by protocols and are an integral part of this Agreement after each Contracting Party in writing notifies the other Contracting Party of the fulfillment of all internal procedures necessary for the entry into such changes and amendments into force.

The Contracting Parties shall, if necessary, may establish a joint committee to develop defined measures for further implementation of the Agreement and make recommendations to the interaction.

### **Article 13. Entry Into Force, Duration and Termination**

1. Each Party shall notify the other Contracting Party in writing through diplomatic channels about the fulfillment of the relevant internal procedures necessary for the entry into force of this Agreement. The agreement takes effect from the date of the last notification.

2. This Agreement is concluded for a period of ten years and will be automatically extended for successive five-year periods, unless either Contracting Party notifies in writing the other Contracting Party twelve months before the end of the relevant period of its intention to terminate the Agreement.

3. For the period of investments made before the date of termination of this Agreement, the provisions of Articles 1 - 12 will remain in force for a further ten years from the date of termination of this Agreement.

Done at. Kyiv, July 6, 2001 in duplicate in Ukrainian, Tajik and Russian languages, all texts being equally authentic. In case of different interpretation of the text of this Agreement, the Parties will apply to text in Russian.

According to Cabinet of Ministers

Ukraine

For the Government

Tajik Republic