

# Amae / 1997

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Republic of Moldova

MINISTRY OF FOREIGN AFFAIRS

AGREEMENT

Nr. 1997

From

27.11.1997

Between the Government and the Government of the Republic of Azerbaijan

On the promotion and reciprocal protection of investments \*

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\* Signed in Baku on 27 November 1997.

In force since January 28, 1999

Moldovan Government and the Government of the Republic of Azerbaijan, hereinafter "Contracting Party",

Desiring to intensify economic cooperation for the sake of long-term mutual benefit of both countries,

Intending to create and maintain favorable conditions for investments to investors of the other country, and

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

They have agreed as follows:

## Article 1.

Definitions

For the purpose of this Agreement:

1) The term investment includes any type of real economic activity invested in accordance with investment of one Contracting Party in the territory of the other Contracting Party in accordance with the legislation of the last, and include in

particular, but not exclusively:

a) convertible currency or other foreign currency purchased by the banks of the Contracting Parties and subject to banking transactions;

b) machinery, equipment including office equipment;

c) economic rights and non-property, including intellectual property (industrial), copyrights, patents, samples, designs, trademarks, company name, secret production and commercial technologies, "know-how", "goodwill related to an investment.

d) shares, securities and corporate debt securities or parts of these legal property;

e) any right conferred by law or required by the contract and any licenses and permits in accordance with the law, including concessions for exploration, extraction, and exploitation of natural resources.

Any change to the range of investment goods does not affect their 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 means any natural person who holds the citizenship of one Contracting Party in accordance with its legislation;

b) the person in respect of each Contracting Party shall appoint any company established in accordance with the legislation in force in the State of each Contracting Party.

3) refers to amounts term benefits gained from an investment and includes, in particular, but not exclusively: profits, interest, capital gains, shares, dividends, royalties, payments for services rendered.

4) The term territory on each Contracting Party shall designate the territory, which is under its sovereignty as well as maritime areas and submarines, over which the Contracting Party concerned exercises, in accordance with national and international law, sovereign rights and jurisdiction.

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

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

The provisions of this Agreement may be amended or supplemented by mutual agreement of the Contracting Parties.

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

1) Each Contracting Party shall in its territory encourage and create favorable conditions for investors of the other Contracting Party to carry out investment and admit investments in accordance with its laws and regulations concerned.

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

## **Article 4.**

"national treatment and Most Favoured Nation

1) Each Contracting Party shall grant in its territory investments by investors of the other Contracting Party a fair and equitable regime and no less favorable than that accorded to investments of its own investors or any third country.

2) Each Contracting Party shall ensure in its territory investors of the other Contracting Party regarding their activities related to investment arrangements no less favorable than that accorded to its own investors or investors of third countries.

## **Article 5.**

"guarantees nationalization or expropriation in case

Foreign investment

- 1) Foreign investments can not be expropriated, nationalized or subjected to similar actions except by law or under a law granting adequate compensation.
- 2) The compensation must correspond to the investment alienated according to an assessment carried out immediately before the moment of expropriation, nationalization or comparable measure became public. It must be paid within three months from the application of the measure, including the related bank interest calculated up to the date of payment. The amount of compensation is paid in the currency in which the investment was made and can be transferred freely and abroad.
- 3) Payment of compensation is ensured by the state body empowered to achieve expropriation, nationalization or other similar measures. State body will provide new readout and mode of payment of compensation not later than the time of application of these penalties. If the state body does not have the necessary financial means, the compensation will be made from the state budget.
- 4) The affected investor is entitled to request, in accordance with legislation, verification of the legality of the expropriation, nationalization or other similar measures, and of the amount of compensation.

## **Article 6. Transfers**

- 1) The Contracting Parties shall guarantee the transfer of payments related to investments and benefits, according to the legislation of the Parties. Transfers will be made in freely convertible currency, without any restrictions and delays. Such transfers shall include in particular, but not exclusively:
  - a) capital and additional amounts to maintain or increase investments;
  - b) income, including dividends, percentages, royalties;
  - c) funds created for repayment of loans;
  - d) payment for services;
  - e) proceeds from sale or liquidation of investments;
  - f) wages of individuals in accordance with the laws and regulations of the Contracting Party, in which investments were made.
- 2) Disbursements will be made in freely convertible currency in accordance with the official exchange rate in effect on the date of settlement.

## **Article 7. Subrogation**

- 1) If a Contracting Party or intermediary designated by it makes payments to its own investors under a guarantee, that it has granted in connection with an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize said:
  - a) transmission based on the law or a legal agreement in this country has any right or claim by the investor to the first Contracting Party, and by the intermediary designated by it, and that
  - b) first mentioned Contracting Party or the designated intermediary she received subrogation right to exercise their rights and to enforce investor claims at issue and assume obligations related to the investment.
- 2) The rights or claims received in subrogation shall not exceed the original rights or claims of the investor.

## **Article 8.**

"Disputes between a Contracting Party and a

Investor of the other Contracting Party

- 1) Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party regarding an investment in the territory of the latter will be the subject of negotiations between the parties to the debate.
- 2) If any dispute which may arise between an investor of one Contracting Party and the other Contracting Party can not be settled in this way within six months from the day of submission desire in writing, the investor is entitled to submit the case

to:

a) The International Centre for Settlement of Investment Disputes (ICSID), considering the conditions applicable by the "Convention on Settlement of Investment Disputes between States and nationals of other States", opened for signature in Washington D.

C. March 18, 1965, in case both Contracting Parties have acceded to this Convention, or

b) an arbitrator or arbitrators international tribunal constituted under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law (UNCITRAL).

The parties to the dispute, may modify these rules by agreement in writing. Arbitration decision shall be final and binding on both Parties to the dispute.

## **Article 9.**

"Settlement of Disputes between the Contracting Parties

1) Disputes arising between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled through consultations or negotiations.

2) If the dispute can not thus be settled within six months, at the request of either Contracting Party, the dispute concerned in accordance with this Article, will be sent a Court of Referees.

3) Court Judges shall be constituted for each case in the following way: within two months of receiving the request for arbitration, each Contracting Party shall designate a member of the Court of Referees. These two members shall choose a national of a third State, which in confirming the two Contracting Parties, shall be appointed as Chairman of the Tribunal (the President). The Chairman shall be appointed within 3 months from the date of appointment of the other two members.

4) If the terms set out in paragraph 3) of this Article the necessary appointments are not made, either Contracting Party may, in the absence of other agreements, invite the President of the International Tribunal (UN) make necessary appointments. If it will be proven that the President holds the citizenship of one of them or if there are other reasons for not serving data then will be invited to make the necessary appointments Vice President. If it will be proven that the Vice President is a national of either Contracting Party or is unable to fulfill the given function will be invited to make appointments in question next member of the International Tribunal (UN), in order of rank, who holds the citizenship of one of them.

5) the Court of Referees will receive the decision by majority vote. These decisions shall be binding. Each Contracting Party shall bear the expenses for the members of the tribunal, as well as its representative in arbitration proceedings. Chairman expenses incurred shall be borne equally by both Contracting Parties. Court Judges will determine its own procedure and may establish its own decision by which the Contracting Parties are to bear a greater share of expenditure.

## **Article 10.**

"Application of other rules and special commitments

1) If the subject is governed simultaneously by this Agreement and by another international agreement, the signatories which are both Contracting Parties, this Agreement shall prevent either Contracting Party or any investor of his who own investments in the territory of another Contracting Party, take advantage of rules that are more favorable to his case.

2) If one party in accordance with its laws and regulations, grant investors of another Contracting Party regime or other specific contractual provisions more favorable than those provided in this Agreement shall be given the more favorable rules.

## **Article 11.**

"Entry into force, duration and expiry

1) This Agreement shall enter into force on the date of the latest notification, in writing, on completion of internal procedures by the Contracting Parties required for entry into force.

2) This Agreement is concluded for a period of 10 years and will be rolled-over automatically to the following five-year periods, unless either Contracting Party notifies in writing the other Contracting Party about its intention to terminate this Agreement with no less than six months before the deadline.

3) For investments made prior to the termination of this Agreement, its provisions shall continue to be valid for a period of 10 years from the date of termination.

Done in Baku on 27 November 1997 in two originals, each in Moldavian, Azerbaijani and Russian languages, all texts being equally authoritative.

In case of differences of interpretation or application of this Agreement, the text in Russian shall prevail.