

# **AGREEMENT BETWEEN THE COUNCIL OF MINISTERS OF THE REPUBLIC OF ALBANIA AND THE GOVERNMENT OF THE REPUBLIC OF AZERBAIJAN FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Council of Ministers of the Republic of Albania and the Government of the Republic of Azerbaijan, hereinafter referred to as the Contracting Parties,

Desiring to intensify economic cooperation to the mutual benefit of both countries,

Intending to create and maintain fair and equitable conditions for investments of investors of one Contracting Party in the state territory of the other Contracting Party',

Conscious that the promotion and reciprocal protection of investments, under this Agreement, will stimulates business initiatives in this field,

Desiring to achieve these objectives in a manner consistent with the protection of health, safety and the environment and the promotion of sustainable development,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term investment means every kind of assets established or acquired directly by an investor of one Contracting Party wholly or exclusively in the state territory of the other Contracting Party in accordance with the State national legislation of the latter Contracting Party and in particular, though not exclusively, includes:

- a. movable and immovable property and any other property rights such as mortgages, liens, leases or pledges, usufruct and similar real rights;
- b. a company, or shares stocks, or any other kind of participation in companies;
- c. money, claims to money or claims to any performance under contract having an financial value and associated with an investment;
- d. intellectual property rights (copyrights, related rights, rights to integrated topographies of integrated circuits and databases) and industrial property rights (rights to inventions, utility models, industrial samples, trademarks and geographical indications), technical processes, know-how and goodwill;
- e. rights to undertake economic and commercial activities conferred by law or by virtue of a contract, including concessions to search for, cultivate, extract or exploit natural resources.

2. The term investor means:

- a, any natural person having the nationality of a Contracting Party in accordance with its State laws;
- b. a company or other legal entity incorporated or duly constituted in accordance with applicable State law of one Contracting Party and having its seat and conducting substantial business activities within the state territory of that Contracting Party

Who makes an investment in the state territory of the other Contracting Party in accordance with the legislation of the latter Contracting Party. If the investor is owned or controlled by persons having the nationality of a State that has no diplomatic

relations with the Contracting Party in whose territory the investment is made, this investor will not benefit from this Agreement.

Any change in the form in which assets are invested or reinvested does not affect their character as investments.

3. The term return means the amount yielded by an investment and includes, in particular, though not exclusively, profit, interest, capital gains, dividends, royalties and fees or any payments in kind related to an investment.

4. The term territory means:

a. With respect to the state territory of the Republic of Albania shall mean the territory under the sovereign of the Republic of Albania, including the territorial waters, as well as the maritime area and the continental shelf over which the Republic of Albania exercises, in accordance with its national legislation and international law, its sovereign and legal rights;

b. With respect to the state territory of the Republic of Azerbaijan, the state territory of the Republic of Azerbaijan, including the respective Caspian Sea sector, over which the Republic of Azerbaijan exercises, in accordance with its national legislation and international law, sovereign rights or jurisdiction.

## **Article 2. Promotion Andprotection of Investments**

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

2. Each Contracting Party shall, within the framework of its legislation, consider in good faith all applications for necessary permits in connection with investments in its state territory, including authorizations for engaging executives, managers, specialists and technical personnel of the investors choice.

3. Investments made by investors of one Contracting Party in the state territory of the other Contracting Party in accordance with its legislation of treatment of aliens of latter Contracting Party, shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security.

4. Neither Contracting Party shall in any way impair by unreasonable, arbitrary' or discriminatory measures the operation, management, maintenance, use, enjoyment expansion, acquisition or disposal of such investments.

5. Each Contracting Party shall not impose mandatory measures on investments by investors of the other Contracting Party concerning purchase of materials, means of production, operation, transport, marketing of its products or similar orders having unreasonable or discriminatory effects.

## **Article 3. Getting Information About Investor and Transparency**

1. Host Contracting Party has the right to seek information from a potential investor or its home state about its corporate governance and its practices as an investor, including in its home state. Host Contracting Party shall protect confidential business information they receive in this regard. Host Contracting Party may make the information provided available to the public in the community where the investment may be located, subject to the protection of confidential business information and to other applicable national legislation.

2. Each Party shall ensure that, to the extent possible, its laws, regulations, procedures, administrative rulings and judicial decisions of general application, as well as international agreements, which they are party, after their entry' into force, which may affect the investments of investors of the other Party in its state territory, are promptly published, or otherwise made publicly available.

## **Article 4. National and Most-favored-nation Treatment**

1. Once a Contracting Party has admitted an investment in its state territory in accordance with its national legislation it shall accord to such investments made by the investors of the other Contracting Party treatment not less favorable than that which it in like circumstances to investments of its own investors or investors of any third State whichever is more favorable to the investor concerned.

2. Each Contracting Party shall in its state territory accord to investors of the other Contracting Party as regards their management, maintenance, use, enjoyment or disposal of their investment treatment not less favorable than that, accorded to its own investors or investors of any third State, whichever is more favorable to the investor concerned.

3. The provisions of paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege, resulting from:

- a. membership to any existing or future trade area, common market, customs union, economic union, monetary' union or any other regional economic organization;
- b. any international agreement or arrangement relating wholly or mainly to taxation;
- c. any multilateral convention or treaty relating to investments, of which one of the Contracting Parties is or may become a party.

4. The treatment referred to in paragraphs 1 and 2 of this Article will be granted on the basis of reciprocity.

## **Article 5. Expropriation**

1. Investments of investors of one Contracting Party shall not be nationalized, expropriated or subjected to measures having an effect, either directly or indirectly, equivalent to nationalization or expropriation (hereinafter referred to as the expropriation) except for public interest in accordance with due process of law, on a non discriminatory' basis and against the payment of prompt, adequate and effective compensation.

2. Such compensation shall amount to the fair market value of the expropriated investments at the time immediately before expropriation or impending expropriation became public known, whichever is the earlier.

3. Such market value shall be calculated in a freely convertible currency on the basis of market rate of exchange applicable for that currency on the day of transfer. Compensation shall also include interest at a commercial rate established on a market basis for the currency in question from the date of expropriation until the date of actual payment. Compensation shall be paid without delay, be effectively realizable and freely transferable.

4. The affected investors shall have a right to prompt review' by a judicial authority or other competent and independent authority of that Contracting Party of its case including valuation of its investments and the payment of compensation in accordance with the principles set out in this Article.

## **Article 6. Compensation for Loses**

1. Investors of one Contracting Party whose investments in the state territory' of the other Contracting Party suffer loses owing to war or other armed conflict, a state of national emergency, revolt, insurrection, civil disturbance, natural disaster or any other similar event, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other forms of settlement, no less favorable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever is more favorable to the investor concerned. Resulting payments shall be effectively realizable, freely convertible and immediately transferable.

2. Without prejudice to paragraph 1 of this Article, an investor of one Contracting Party who, in any of the situation referred to in that paragraph, suffer losses in the state territory' of the other Contracting Party resulting from:

- a. requisitioning of its investment or part thereof by the latters armed forces or authorities; or
- b. destruction of its investment or part thereof by the latters armed forces or authorities forces which was not required by the necessity of the situation,

Shall be accorded adequate compensation in the light of the particular circumstances.

## **Article 7. Free Transfers**

1. In accordance with its legislation, each Contracting Party shall in good faith ensure to investors of the other Contracting Party the free transfer of payments in connection with an investment into and out of its state territory. Such transfers shall include, in particular though not exclusively:

- a. The principal and additional amounts to maintain, develop or increase the investment;
- b. net profit, capital gains, dividends, interest, royalties, fees and any other current income accruing from investments;
- c. investment returns, as defined in Article 1;
- d. payments in connection with contracts, including loan agreements;

- e. compensation provided to Article 5 and 6;
- f. proceeds accruing from the total or partial sale or liquidation of investments;
- g. earnings and other remuneration of personal engaged from abroad in connection with an investments;
- h. payments in respect of management fees;
- i. payments arising out of the settlement of a dispute.

2. All transfers under this Agreement shall be made without any restriction or undue delay in a freely convertible currency at the market rate of exchange applicable on the date of transfer in the currency to be transferred. If a market rate is unavailable the applicable rate of exchange shall be the most recent rate of exchange for conversion of currencies into Special Drawing Rights.

3. Notwithstanding paragraphs 1 and 2 above, a Contracting Party may prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of measures ensuring investors compliance with the Host Contracting Partys legislation relating to:

- a. the payment of taxes and dues;
- b. bankruptcy, insolvency, or the protection of the rights of creditors;
- c. criminal or penal offences;
- d. ensuring compliance with orders or judgments of the courts or tribunals of the Host Contracting Party'.

## **Article 8. More Favorable Terms**

If the legislations of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favorable than that provided for, by this Agreement, such regulation shall, to the extent that it is more favorable, prevail over this Agreement.

## **Article 9. Subrogation**

Where a Contracting Party or its designated agency (guarantor) makes a payment under a guarantee it has accorded in respect of non-commercial risks of an investment in the state territory if the other Contracting Party', the Host Contracting Party' shall recognize the assignment to the guarantor of all the rights and claims resulting from such an investment, and shall recognize that the guarantor is entitled to exercise such rights and enforce such claims to the same extent as the original investor.

## **Article 10. Consultations**

The Contracting Parties agree to consult promptly, on the request of either, to resolve any dispute arising between them in connection with this Agreement, or to review any matter relating to the implementation or application of this Agreement or to study any other issue that may arise from this Agreement. Such consultations shall be held between the competent authorities of the Contracting Parties at a place and at a time agreed upon by the Contracting Parties through diplomatic channels.

## **Article 11. Denial of Benefits**

1. Contracting Party may deny the benefits of this Agreement, including the right to commence or to continue dispute settlement proceedings, to an investor of the other Contracting Party and to the investments of that investor, if:

- The investor is owned or controlled by persons having the nationality of a State that is not a Contracting Party or of the denying Party;
- Or the investor conducts no substantial business activities in the state territory of the other Contracting Party.

2. For the avoidance of doubt, once exercised, such denial may apply to all or only specified investors or investments of investors, and whether existing or future investors or investments.

## **Article 12. Settlement of Disputes between the Contracting Parties**

1. Any dispute between the Contracting Parties concerning the interpretation and application of this Agreement shall as far as possible, be settled through negotiations.
2. If it is not possible to settle the dispute in this way within six months, from the start of negotiations it shall be submitted at the request of either of the two Contracting Parties to an Arbitral Tribunal constituted in accordance with this Article.
3. The Arbitral Tribunal shall be set up in the following way:  
  
Within two months of receipt of request for arbitration each Contracting Party shall appoint one arbitrator and these two arbitrators shall select a national of a third Country as Chairman who on approval by the two Contracting Parties. The Chairman shall be appointed within four months from the date of appointment of the other two members.
4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in absence of any other agreement invite the President of the International Court of justice to make the necessary? appointments. If the President is a national of either Contracting Party, or if he is otherwise prevented from discharging the said function the Vice-President shall be invited to make the appointments. If the Vice-President also happens to be a national of either Contracting Party or is 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.
5. The Arbitral Tribunal shall determine its own rules of procedure. The Arbitral Tribunal shall reach its decision on the basis of this Agreement and in accordance with
5. Neither of the Contracting Parties, which is a party to a dispute, can raise an objection, at any phase of the arbitration procedure or of the execution of an arbitral award, on account of the fact that the investor, which is the opposing party of the dispute, had received an indemnification covering a part or the whole of its losses by virtue of an insurance.
6. Dispute shall be resolved in accordance with law, applying the terms of this Agreement, the State law of the Contracting Party to the dispute, and principles of public international law.
7. Such award shall be final and binding for the parties to the dispute and shall be executed according to national legislation.

## **Article 13. Application of the Agreement**

The provisions of this Agreement shall apply to investments made by investors of one Contracting Party prior to as well as after the date of entry into force of this Agreement, and shall be applicable from the date of its entry into force, but it shall not apply to any dispute concerning an investment which arose, or any claim, which was settled before entry into force of this Agreement.

## **Article 14. Additions and Amendments**

Any additions and amendments may be made to this Agreement by mutual consent of the Contracting Parties. Such additions and amendments shall be made in a form of separate protocols being an integral part of this Agreement and shall enter into force in accordance with the provision of Article 16 of this Agreement.

## **Article 15. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force 30 (thirty) days after receipt of the last written notification by which the Contracting Parties inform each other on the completion of the internal procedures required for its entry' into force.
2. This Agreement is signed for uncertain period of time and shall remain in force unless one Contracting Party notifies the other Contracting Party' through diplomatic channels in writing of its intention to terminate it. The termination of this Agreement shall become effective until the expiration of a twelve month period after notice of termination has been received by the other Contracting Party
3. In respect of investments made prior to the date of the termination of this Agreement the provisions of Articles 1 to 15 shall continue to be effective for a period of ten years from the date of notification about its termination unless otherwise agreed between the Contracting Parties.

Done at Baku on the 9th of February, 2012, in two originals, in the Albanian, Azerbaijani and English languages, all texts being equally authentic. In case of any divergence of interpretation and application, the English text shall prevail.

For the Council of Ministers of the Republic of Albania

For the Government of the Republic of Azerbaijan