

# **Agreement between the Government of the Kingdom of Denmark and the Government of the Russian Federation concerning the Promotion and Reciprocal Protection of Investments**

The Government of the Kingdom of Denmark and the Government of the Russian Federation (hereinafter referred to as the "Contracting Parties"),

DESIRING to create favourable conditions for increasing investments by investors of one Contracting Party in the territory of the other Contracting Party,

RECOGNIZING that a fair and equitable treatment of investments on a reciprocal basis will serve this aim,

HAVE AGREED as follows:

## **Article 1. Definitions**

For the purpose of this Agreement:

(1) The term "investment" shall comprise every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations and shall include in particular:

(a) Movable and immovable property, related property rights, such as mortgages and guarantees, as well as leases,

(b) Shares, parts or other forms of participation in enterprises,

(c) Claims to money and claims to performance pursuant to contracts having an economic value and associated with an investment,

(d) Intellectual property rights, as well as technology, goodwill and know-how,

(e) Any rights, conferred by law or under contract, to undertake economic activity, including rights to search for, cultivate, extract or exploit natural resources.

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

(2) The term "returns" shall mean the amounts yielded by an investment and includes in particular: Profit, interest, capital gains, dividends, royalties or other fees.

(3) The term "investor" shall mean with regard to either Contracting Party:

(a) Natural persons having the citizenship or nationality of that Contracting Party in accordance with its laws,

(b) Any corporations, companies, firms, enterprises, organizations and associations organized in the territory of that Contracting Party in accordance with its legislation,

Provided that those natural persons, corporations, companies, firms, enterprises, organizations or associations are competent, in accordance with the legislation of that Contracting Party, to make investments in the territory of the other Contracting Party.

(4) The term "territory" means the territory of the Kingdom of Denmark and the territory of the Russian Federation as well as those maritime areas over which the corresponding state exercises, in accordance with international law, sovereign rights or jurisdiction for the purpose of exploring, exploiting and conserving natural resources.

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

- (1) Each Contracting Party shall promote in its territory investments by investors of the other Contracting Party, create favourable conditions for them and admit such investments in accordance with its legislation.
- (2) Investments of investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.
- (3) Each Contracting Party shall permit investors of the other Contracting Party to establish representative offices in its territory in accordance with its legislation.
- (4) Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.
- (5) Returns, including the returns yielded from the reinvestment, shall in accordance with the provisions of this Agreement be given the same protection as the investment.

### **Article 3. Treatment of Investments**

- (1) Each Contracting Party shall accord investments made by investors of the other Contracting Party in its territory fair and equitable treatment no less favourable than that which it accords to investments of its own investors or to investments of investors of any third state, whichever treatment is more favourable.
- (2) Each Contracting Party shall accord in its territory to investors of the other Contracting Party as regards the management, maintenance, use, enjoyment or disposal of their investments fair and equitable treatment no less favourable than that which it accords to its own investors or to investors of any third state, whichever treatment is more favourable.
- (3) Each Contracting Party may have in its legislation limited exceptions from national treatment provided for in section 1 and 2 of this Article. Any new exception will, however, apply only to investments made in its territory by investors of the other Contracting Party after the entry into force of such exception.
- (4) The provisions of this Article relative to the granting of Most Favoured Nations treatment shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party, preferences or privileges resulting from:
  - (a) Its participation in a free trade area, customs or economic union or similar multilateral agreement,
  - (b) The agreements in the field of economic cooperation of the Russian Federation with the states that constituted the former Union of Soviet Socialist Republics.

### **Article 4. Expropriation**

- (1) Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for measures taken in the public interest on a basis of non-discrimination and against prompt, adequate and effective compensation. Such compensation shall amount to the value of the investment expropriated immediately before the expropriation or impending expropriation became public knowledge. The compensation shall be paid without delay, be freely transferable and shall include interest at the normal commercial rate established on a market basis from the date of expropriation until the date of payment.
- (2) The investor affected shall, have the right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.

### **Article 5. Compensation for Losses**

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war, other armed conflicts, a state of national emergency or other similar circumstances shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which it accords to its own investors or to investors of any third State. Resulting payments shall be made without delay and be freely transferable.

## **Article 6. Transfer of Payments In Connection with an Investment**

(1) Each Contracting Party shall allow the investor of the other Contracting Party to transfer payments in connection with an investment, including:

- (a) The initial investment,
- (b) The proceeds from sale or liquidation of all or part of an investment,
- (c) The returns,
- (d) The payments under a loancontract, related to an investment,
- (e) Unspent wages of personnel engaged from abroad in connection with an investment.

Transfers of such payments shall be made without delay.

(2) Transfers of payments under Article 4 and 5 of this Agreement, as well as under section (1) of this Article shall be made in a freely convertible currency at the rate of exchange applicable on the date of transfer and in accordance with the exchange regulations in force of the Contracting Party in whose territory the investment was made.

## **Article 7. Subrogation**

Where one Contracting Party or its designated agency has granted any guarantee against non-commercial risks to its investor with regard to his investment in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party or its designated agency by virtue of subrogation to the rights of the investor when payment has been made under this guarantee by the first Contracting Party or its designated agency. Such rights should be exercised by the first Contracting Party or its designated agency in accordance with the legislation of the latter Contracting Party.

## **Article 8. Disputes between an Investor of One Contracting Party and the other Contracting Party**

(1) Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment on the territory of that other Contracting Party shall be subject to negotiations between the parties in dispute.

(2) If the dispute cannot be settled in such a way within a period of six months from the date of written notification of the claim, the investor shall be entitled to submit the case either to:

- (a) A sole arbitrator or an ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL),<sup>1</sup> or Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL),<sup>1</sup> or
- (b) The Institute of Arbitration of the Chamber of Commerce in Stockholm.

## **Article 9. Disputes between the Contracting Parties**

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

(2) If such a dispute cannot be settled within six months from the beginning of negotiations, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way:

Each Contracting Party shall appoint one member of the arbitral tribunal within three months from the date of the request for arbitration. These two members shall then select a national of a third State, who on approval by the Contracting Parties shall be appointed Chairman of the arbitral tribunal. The Chairman shall be appointed within three months from the date of appointment of the other two members of the arbitral tribunal.

(4) If within the periods specified in section 3 of this Article the necessary 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 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 necessary appointments. If the Vice-President is a national of either Contracting Party or if he, too, is otherwise 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 necessary appointments.

(5) The arbitral tribunal reaches its decision on the basis of the provisions of this Agreement, other agreements concluded between the Contracting Parties as well as on the generally recognized principles and norms of international law. The arbitral tribunal reaches its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties.

(6) Each Contracting Party shall bear the cost of its own member of the arbitral tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties,

(7) All other procedural issues will be determined by the arbitral tribunal.

## **Article 10. Consultations**

(1) The Contracting Parties shall, whenever needed, hold consultations in order to review the implementation or application of this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties.

(2) A first consultation between the Contracting Parties will be held within one year after the entering into force of this Agreement with a view to exchanging information on their legislative exceptions from national treatment, mentioned in Article 3, section 3 of this Agreement.

## **Article 11. Application of this Agreement**

(1) This Agreement shall apply to all investments made by an investor of one Contracting Party in the territory of the other Contracting Party after 1 January 1977.

(2) This Agreement shall not apply to the Faroe Islands and to Greenland.

The provisions of this Agreement may be extended to the Faroe Islands and to Greenland as may be agreed between the Contracting Parties in an Exchange of Notes.

(3) The provisions of this Agreement shall not apply to taxation.

## **Article 12. Entry Into Force, Duration and Termination of the Agreement**

(1) Each Contracting Party shall notify the other Contracting Party in writing of the completion of its internal procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of the two notifications.

(2) This Agreement shall remain in force for a period of fifteen years. Thereafter it shall remain in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other Contracting Party.

(3) In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 11 of this Agreement shall remain in force for a further period of fifteen years from that date.

In the case of difference of interpretation, the interpretation will be done in accordance with the English text.

For the Government of the Kingdom of Denmark:

POUL NYRUP RASMUSSEN

Prime Minister

For the Government of the Russian Federation:

Viktor Chemomyrdin

Prime Minister