

**AGREEMENT BETWEEN**

**THE GOVERNMENT OF MONTENEGRO AND THE GOVERNMENT OF THE**

**REPUBLIC OF MOLDOVA**

**ON PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of Montenegro and the Government of the Republic of Moldova, hereinafter referred to as the "Contracting Parties,"

Desiring to intensify economic co-operation between the two States,

Intending to encourage and create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefit,

Recognising that the mutual promotion and protection of investments on the basis of this Agreement will stimulate business initiative,

Have agreed as follows:

### **Article 1. Definitions**

For the purposes of the Agreement:

1. The term "investment" means every kind of assets invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations and shall include in particular, though not exclusively:

- a) movable and immovable property as well as any other rights in rem and real assurances such as mortgages, liens, pledges, usufructs and similar rights;
- b) stock, shares, debentures and other forms of participation in companies;
- c) claims to money or to any performance having economic value, including every loan granted for the purpose of creating economic value;
- d) intellectual property rights, as defined in the multilateral agreements concluded under the auspices of the World Intellectual Property Organization, in as far as both Contracting Parties are parties to them, including, but not limited to, copyrights and neighboring rights, industrial property rights, trademarks, patents, industrial designs and technical processes, rights in plants varieties, know-how, trade secrets, trade names and goodwill;
- e) rights in the field of intellectual property;
- f) concessions conferred by law, by administrative act or under a contract, by a competent authority, including concessions to search for, develop, extract or exploit natural resources.

Any change of the form in which assets are invested or reinvested shall not affect their character as an investment.

2. The term "investor" means in respect of either Contracting Party:

- a) a natural person, a national of a Contracting Party who makes an investment in the territory of the other Contracting Party;

b) a legal entity, including any company, corporation, business association and other enterprise which is incorporated, constituted or otherwise duly organized in accordance with the legislation in force of one Contracting Party, having its seat and performing real business activity in the territory of the same Contracting Party and making an investment in the territory of the other Contracting Party;

c) any legal entity, or partnership, constituted in accordance with the legislation in force of a third State, which invests in the territory of either of the Contracting Parties in which the investor referred to in a) or b) of this paragraph exercises a dominant influence.

3. The term "returns" means any money or material resources yielded by an investment and includes, in particular, though not exclusively, profits, dividends, interests, royalties, capital gains and other fees.

4. The term "territory" means:

— With respect to Montenegro: geographical area composed by the soil and subsoil, waters and air column over the soil and territorial waters, under which Montenegro exercises its sovereign rights and jurisdiction, in accordance with its legislation and international law.

— With respect to the Republic of Moldova: geographical area composed by the soil and subsoil, waters and air column over the soil and territorial waters, under which the Republic of Moldova exercises its sovereign rights and jurisdiction, in accordance with its legislation and international law.

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

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

2) Each Contracting Party shall accord to investments of investors of the other Contracting Party in its territory fair and equitable treatment and full and constant protection and security.

3) Neither Contracting Party shall impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments of investors of the other Contracting Party in its territory.

4) Each Contracting Party shall, within the framework of its legislation, give sympathetic consideration to applications of investors for necessary permits in connection with the investments in its territory, including authorisations for engaging top managerial and technical personnel of their choice, regardless of their nationality.

5) Each Contracting Party shall observe any obligation it may have entered into with regard to specific investments by investors of the other Contracting Party.

## **Article 3. National Treatment and Most Favored Nation Treatment**

1) Each Contracting Party shall accord to investments, made in its territory by investors of the other Contracting Party, treatment not less favourable than which it accords to

Investments of its own investors or to investments of investors of any third State, whichever is more favorable.

2) Each Contracting Party shall accord to investors of the other Contracting Party, as regards their activity in connection with investments in its territory, treatment not less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favorable.

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) its participation in any existing or future customs union, economic union, regional

Economic integration agreement or similar international agreement, or

b) any international agreement or arrangement relating wholly or mainly to taxation.

## **Article 4. Expropriation**

1. A Contracting Party shall not expropriate or nationalize directly or indirectly an investment in its territory of an investor of another Contracting Party or take any measure or measures having equivalent effect (hereinafter referred to as

"expropriation") except:

- a. for a purpose which is in the public interest;
  - b. on non-discriminatory basis;
  - c. in accordance with due process of law, and
  - d. accompanied by payment of prompt, adequate and effective compensation.
2. Compensation shall be fully realizable and freely transferable. and shall be paid without delay.
3. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation occurred. The fair market value shall not reflect any change in value occurring because the expropriation had become publicity known earlier.
4. An investor of a Contracting Party affected by the expropriation carried out by the other Contracting Party shall have the right to prompt review of its case, including the valuation of its investment and the payment of compensation in accordance with the provisions of this Article, by judicial authority or another competent and independent authority of the latter Contracting Party.

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

1. When investments made by investors of either Contracting Party suffer loss or damage owing to war or other armed conflict which is not a result of the activities of the Contracting Party to which the investors belong, civil disturbances, revolution, riot or similar events in the territory of the latter Contracting Party, they shall be accorded by the latter Contracting Party, treatment, as regards restitution, indemnification, compensation or any other settlement, not less favorable than that accorded by the latter Contracting Party to its own investors or to investors of any third State, whichever is most favorable to the investors concerned.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting Party resulting from:

- a. requisitioning of their property or part thereof by its forces or authorities,
- b. destruction of their property or part thereof by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded a prompt restitution, and where applicable prompt, adequate and effective compensation for damage or loss sustained during the period of requisitioning or as a result of destruction of their property. Resulting payments shall be made in freely convertible currency and be freely transferable without delay.

## **Article 6. Transfers**

1. Each Contracting Party shall ensure that all payments relating to an investment in its territory of an investor of the other Contracting Party may be freely transferred into and out of its territory without delay, after the payment of its fiscal obligations. Such transfers shall include, in particular, though not exclusively:

- a. the initial capital and additional amounts to maintain or increase an investment;
- b. returns;
- c. payments made under a contract including a loan agreement;
- d. proceeds from the sale or liquidation of all or any part of an investment;
- e. payments of compensation under Articles 4, 5 and 7 of this Agreement.
- f. payments arising out of the settlement of an investment dispute;
- g. earnings and other remuneration of personnel engaged from abroad in connection with an investment.

2. Each Contracting Party shall ensure that the transfers under paragraph 1 of this Article are made in a freely convertible currency at the market rate of exchange valid on the date of transfer in the territory of the Contracting Party in which the investment is made

3. Each Contracting Party shall ensure that the interest at LIBOR rate is calculated together with compensation for the period starting from the occurrence of events under Articles 4, 5 and 7 of this Agreement until the date of transfer of payment and payment will be effected in accordance with provisions of paragraphs 1 and 2 of this Article.

## **Article 7. Subrogation**

If a Contracting Party or its designated agency makes a payment under an indemnity, guarantee or contract of insurance given in respect of an investment of an investor in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment of any right or claim of such investor to the former Contracting Party or its

Designated agency to exercise by virtue of subrogation any such right or claim to the same extent as its predecessor in title.

## **Article 8. Settlement of Disputes between an Investor and a Contracting Party**

1. Any investment dispute between a Contracting Party and an investor of the other Contracting Party shall be settled amicably by negotiations.

2. If a dispute under paragraph 1 of this Article cannot be settled within six (6) months of a written notification, the dispute shall be upon the request of the investor settled as follows:

a. by a competent court of the Contracting Party, or

b. by conciliation or arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington on March 18<sup>th</sup>, 1965. In case of arbitration, each Contracting Party, by this Agreement irrevocably consents in advance, even in the absence of an individual arbitral agreement between the Contracting Party and the investor, to submit any such dispute to this Centre. This consent implies the renunciation of the requirement that the internal administrative or judicial remedies should be exhausted; or

c. by arbitration by three arbitrators in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), as amended by the last amendment accepted by both Contracting Parties at the time of the request for initiation of the arbitration procedure. In case of arbitration, each Contracting Party, by this Agreement irrevocably consents in advance, even in the absence of an individual arbitral agreement between the Contracting Party and the investor, to submit any such dispute to the tribunal mentioned; or

d. by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC).

3. The award shall be final and binding; it shall be executed according to the national law; each Contracting Party shall ensure the recognition and enforcement of the arbitral award in accordance with its relevant laws and other regulations.

4. A Contracting Party which is a party to a dispute shall not, at any stage of conciliation or arbitration proceedings or enforcement of an award, raise the objection that the investor, who is the other party to the dispute, has received an indemnity by virtue of a guarantee in respect of all or a part of its losses.

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

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled as far as possible by negotiations.

2. If a dispute according to paragraph 1 of this Article cannot be settled within six (6) months of the date on which such negotiations were requested in writing by either Contracting Party, it shall at the request of either Contracting Party be submitted to an arbitral tribunal

3. Such arbitral tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third State as their chairman. Such arbitrators shall be appointed within three (3) months from the date one Contracting Party has informed the other Contracting Party, of its intention to submit the dispute to an arbitral tribunal, the chairman of which shall be appointed within three (3) further months.

4. If the periods specified in paragraph 3 of this Article are not observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either of the Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President or in case of his inability the member of the International

Court of Justice next in seniority, should be invited under the same conditions to make the necessary appointments.

5. The tribunal shall establish its own rules of procedure.

6. The arbitral tribunal shall reach its decision in virtue of the present Agreement and pursuant to the rules of international law. It shall reach its decision by a majority of votes; the decision shall be final and binding.

7. Each Contracting Party shall bear the costs of its own member and of its legal representation in the arbitration proceedings. The costs of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The tribunal may, however, in its award determine another distribution of costs.

## **Article 10. Amendments**

The Contracting Parties may introduce amendments in the present Agreement in due manner by an Additional Protocol, which shall be an integral part of the present Agreement. The mentioned Protocol shall come into force in accordance with the provisions of Article 14.

## **Article 11. Application of other Rules**

If the provisions of law 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 of investors of either Contracting Party to a treatment more favourable than is provided for by this Agreement, such provisions shall, to the extent that they are more favourable, prevail over this Agreement.

## **Article 12. Application of the Agreement**

This Agreement shall apply to all investments made by investors from one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations existing at or made after its entry into force.

## **Article 13. Consultations**

Each Contracting Party may propose to hold, whenever necessary, consultations on any matter affecting the implementation of this Agreement. These consultations shall be held at a place and a time to be agreed upon through diplomatic channels.

1. This Agreement shall enter into force on the date of the later notification through diplomatic channels by which either Contracting Party notifies the other that its internal legal requirements for the entry into force of this Agreement have been fulfilled

2. This Agreement shall remain in force for a period of ten (10) years and shall continue in force automatically thereafter for the same period or periods unless one year before the expiry of the initial or any subsequent period either Contracting Party notifies the other Contracting Party of its intention to denounce the Agreement. In that case the denunciation shall become effective by the expiration of current period of ten (10) years.

3. In respect of investments made prior to the date of termination of this Agreement, the provisions of the Agreement shall continue to be effective for a period of ten (10) years from the date of its termination.

Done at\_on\_in two originals, in Montenegrin, Moldavian,

And English languages, all three texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

## **Article 14. Entry Into Force, Duration and Termination**

FOR THE GOVERNMENT OF MONTENEGRO

FOR THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA