

AGREEMENT BETWEEN THE GOVERNMENT OF GEORGIA AND THE GOVERNMENT OF THE REPUBLIC OF LATVIA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of Georgia and the Government of the Republic of Latvia hereinafter refereed as the "Contracting Parties",

Recognising the need to protect investments of the investors of one Contracting Party in the territory of the other Contracting Party on a non-discriminatory basis;

Desiring to promote greater economic cooperation between them, with respect to investments by nationals and companies of one Contracting Party in the territory of the other Contracting Party;

Recognising that agreement on the treatment to be accorded to such investments will stimulate the flow of private capital and the economic development of the Contracting Parties;

Agreeing that a stable framework for investments will contribute to maximising the effective utilisation of economic resources and improve living standards; and

Having resolved to conclude an Agreement concerning the promotion and protection of investments;

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purpose of this Agreement,

1. The term "investment" means every kind of asset invested by investors of one Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter, and in particularly, though not exclusively, includes:

(a) movable and immovable property and related property rights, such as leases, mortgages, liens, pledges, usufructs and similar rights;

(b) shares, stocks, debentures and any other form of participation in a company;

(c) claims to money or to any performance under contract having an economic value;

(d) intellectual property rights, including copyrights, trademarks, patents, industrial designs and technical processes, know-how, trade secrets, trade names and goodwill;

(e) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as an investment provided that such alteration is in accordance with the laws and regulations of the Contracting Party in whose territory the investment was made.

2. The term "investor" shall mean any natural or legal person who invests in the territory of the other Contracting Party.

(a) In respect of the Republic of Latvia:

(i) "natural person" means citizens of Latvia as well as persons permanently residing in Latvia who are not citizens of Latvia or any other state but who are entitled, under the laws and regulations of the Republic of Latvia, to receive a non-citizen's passport;

(ii) "legal person" means companies, associations and establishments, which are incorporated or constituted in accordance with the laws and regulations of the Republic of Latvia.

(b) In respect of Georgia:

(i) any natural person who is a national of Georgia;

(ii) any legal entity, established or registered in accordance with the legislation of Georgia.

3. The term "returns" means the amounts yielded by an investment and, in particular, profits, interests, capital gains, dividends, royalties, license fees and other fees.

4. The term "territory" means:

(a) In respect of the Republic of Latvia: the land territory, internal waters and territorial sea of the Republic of Latvia and the airspace above, as well as the maritime zones beyond the territorial sea, including the seabed and subsoil, over which that the Republic of Latvia exercises sovereign rights or jurisdiction in accordance with its national laws in force and international law, for the purpose of exploration and exploitation of the natural resources of such areas.

(b) In respect of Georgia: the territory recognized by the international community within the state borders of Georgia, including land territory, internal waters and territorial sea, the air space above them, in respect of which Georgia exercises its sovereignty, as well the exclusive economic zone and continental shelf adjacent to its territorial sea in respect of which Georgia may exercise its sovereign rights in accordance with the international law, for the purpose of exploration.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

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

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

Article 3. National and Most-favoured-nation Treatment

1. Each Contracting Party shall accord to investments of investors of the other Contracting Party, treatment no less favourable than that it accords to investments of its own investors or investors of third State, whichever is more favourable.

2. Each Contracting Party shall accord to investors of the other Contracting Party, treatment no less favourable than the treatment it accords to its own investors and investors of any third State with respect to expansion, management, maintenance, use, enjoyment and sale or other disposal of investments, whichever is more favourable.

Article 4. Exemptions

No provision of this Agreement shall be construed as to oblige a Contracting Party to extend to the investors of the other Contracting Party and to their investments and returns of investments the present or future benefit of any treatment, preference or privilege resulting from

(a) any membership in a free trade area, customs union, monetary union, common market and any international agreement resulting in such unions or similar institutions;

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

Article 5. Expropriation and Compensation

1. A Contracting Party shall not expropriate or nationalise directly or indirectly an investment of an investor of the other Contracting Party or take any measures having equivalent effect (hereinafter referred to as expropriation) except:

(a) for a public purpose;

- (b) in a specific and non-discriminatory manner;
- (c) in accordance with due process of law; and
- (d) on payment of prompt, adequate and effective compensation in accordance with paragraphs 2 and 3 of this Article.

2. Compensation shall:

- (a) be paid without delay. In case of delay any exchange rate loss arising from this delay shall be borne by the host country;
- (b) 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 publicly known earlier;

- (c) be fully realizable and freely transferable;
- (d) include interest at a commercial rate established on a market basis for the currency of payment from the date of expropriation until the date of actual payment.

3. An investor of a Contracting Party which claims to be affected by expropriation 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 a judicial authority or another competent and independent authority of the latter Contracting Party.

Article 6. Compensation for Losses

1. An investor of a Contracting Party who has suffered a loss relating to its investment in the territory of the other Contracting Party due to war or to other armed conflict, state of national emergency, revolution, insurrection, civil disturbance or any other similar event in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or any other settlement, no less favourable than that which it accords to its own investor or to investors of any third state, whichever is more favourable to the investor.

2. An investor of a Contracting Party who in any of the events referred to in paragraph 1 suffers loss resulting from:

- (a) requisitioning of its investment or part thereof by the forces or authorities of the other Contracting Party, or
- (b) destruction of its investment or part thereof by the forces or authorities of the other Contracting Party, which was not required by the necessity of the situation,

Shall in any case be accorded by the latter Contracting Party restitution or compensation which in either case shall be prompt, adequate and effective and, with respect to compensation, shall be in accordance with paragraphs 2 and 3 of Article 5.

Article 7. Transfers

1. Each Contracting Party shall, subject to its laws and regulations, ensure to investors of the other Contracting Party the transfer of their investments and transfer payments related to investments. Such payments shall include in particular, though not exclusively:

- (a) the initial capital and additional amounts to maintain or increase an investment;
- (b) returns;
- (c) proceeds obtained from the total or partial sale or liquidation of investments;
- (d) payments made under a contract, including a loan payment;
- (e) compensation payable pursuant to Articles 5 and 6 of this Agreement;
- (f) payments arising out of a dispute;
- (g) earnings and other remuneration of personnel engaged from abroad and working in connection with an investment.

2. Each Contracting Party shall further ensure that the transfers referred to in paragraph 1 of this Article shall be made in a

freely convertible currency and at the prevailing market rate of exchange applicable within the Contracting Party accepting the investments and on the date of transfer.

3. In the absence of a market for foreign exchange, the rate to be used shall be the most recent exchange rate for the conversions of currencies into Special Drawing Rights.

4. Notwithstanding paragraphs 1, 2 and 3 of this Article, a Contracting Party may prevent a transfer through the equitable, nondiscriminatory, and good faith application of its laws relating to:

(a) bankruptcy, insolvency, or the protection of the rights of creditors;

(b) issuing, trading, or dealing in securities, futures, options, or derivatives;

(c) criminal or penal offenses;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or

(e) ensuring compliance with orders or judgements in judicial or administrative proceedings.

Article 8. Subrogation

1. If a Contracting Party or its designated agency makes payment to its own investors under a guarantee it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) the assignment, whether under the law or pursuant to a legal transaction in that country, of any right or claim by the investor to the former Contracting Party or its designated agency, as well as,

(b) that the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and shall assume the obligations related to the investment.

2. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

Article 9. Disputes between an Investor and a Contracting Party

1. Any legal dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

2. If the dispute has not been settled within three (3) months from the date on which it was raised in writing, the dispute may, at the choice of the investor, be submitted:

(a) to the competent courts of the Contracting Party in whose territory the investment is made; or

(b) to any ad hoc arbitration tribunal which unless otherwise agreed on by the parties to the dispute, is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(c) to arbitration under the International Centre for Settlement of Investment Disputes (ICSID), established pursuant to the 'Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965 (hereinafter referred to as the "Centre"), provided that both the disputing Contracting Party and the Contracting Party of the investor are parties to the ICSD Convention; or

(d) to arbitration under the Additional Facility of the Centre, provided that either the disputing Contracting Party or the Contracting Party of the investor is a party to the ICSID Convention.

3. An investor who has submitted the dispute to a national court may nevertheless have recourse to one of the arbitral tribunals mentioned in paragraphs 2 (b) to (d) of this Article if, before a judgment has been delivered on the subject matter by a national court, the investor declares not to pursue the case any longer through national proceedings and withdraws the case.

4. 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 other party to the dispute, has received an indemnification covering a part or the whole of its losses by virtue of an insurance.

5. The arbitral tribunal established under this Article shall reach its decision on the basis of national laws and regulations of

the Contracting Party, which is a party to the dispute, provisions of this Agreement, as well as applicable rules of international law.

6. The arbitration award shall be final and binding upon both parties to the dispute. Both Contracting Parties shall commit themselves to the enforcement of the award.

Article 10. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled amicably through diplomatic channels.

2. If the dispute cannot be thus settled within three (3) months, it shall upon the request of either Contracting Party, be submitted to an Arbitral Tribunal in accordance with the provisions of this Article.

3. The Arbitral Tribunal shall be constituted for each individual case in the following way. Within two (2) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. These two members shall then select a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal (hereinafter referred to as the "Chairman"). The Chairman shall be appointed within two (2) 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, a request may be made to the President of the International Court of Justice to make the appointments. If he happens to be 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 reach its decision by a majority of votes. Such decision shall be binding. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the both Contracting Parties. The Arbitral Tribunal may, however, decide that a higher proportion of the costs shall be borne by one of the two Contracting Parties and this award shall be binding on both Contracting Parties. The Arbitral Tribunal shall determine its own procedure.

Article 11. Application of other Rules and Special Commitments

1. Where a matter is governed simultaneously both by this Agreement and by another international agreement to which both Contracting Parties are parties, nothing in this Agreement shall prevent either Contracting Party or any of its investors who own investments in the territory of the other Contracting Party from taking advantage of whichever rules are more favourable to his case..

2. If the treatment to be accorded by one Contracting Party to investments of investors of the other Contracting Party in accordance with its laws and regulations or other specific provisions of contract is more favourable than that accorded by this Agreement, the more favourable shall be accorded.

Article 12. Applicability of this Agreement

This Agreement shall apply to investments made in the territory of one of the Contracting Parties in accordance with its laws and regulations by investors of the other Contracting Party prior to as well as after the entry into force of this Agreement, but shall not apply to any dispute concerning an investment which arose, or any claim which was settled before its entry into force.

Article 13. General Exceptions

1. Nothing in this Agreement shall be construed as preventing a Contracting Party from taking any action necessary for the protection of its essential security interests in time of war or armed conflict, or other emergency in international relations.

2. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Contracting Party from adopting or maintaining measures, including environmental measures:

(a) necessary for the maintenance of public order;

(b) necessary to protect human, animal or plant life or health.

3. The provisions of this Article shall not apply to Article 5, Article 6 or paragraph 1.(e) of Article 7 of this Agreement.

Article 14. Transparency

1. Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, procedures and administrative rulings and judicial decisions of general application as well as international agreements which may affect the investments of investors of the other Contracting Party in the territory of the former Contracting Party.

2. Nothing in this Agreement shall require a Contracting Party to furnish or allow access to any confidential or proprietary information, including information concerning particular investors or investments, the disclosure of which would impede law enforcement or be contrary to its laws protecting confidentiality or prejudice legitimate commercial interests of particular investors.

Article 15. Consultations

The Contracting Parties shall, at the request of either Contracting Party, hold consultations for the purpose of reviewing the implementation of this Agreement and studying any issue that may arise from this Agreement. Such consultations shall be held between the competent authorities of the Contracting Parties in a place and at a time agreed on through diplomatic channels.

Article 16. Changes and Amendments

The provisions of this Agreement may be changed and amended by the written mutual agreement of the Contracting Parties. Any change and amendment of this Agreement will enter into force after the Contracting Parties have notified in writing each other on the completion of the internal legal procedures necessary for this purpose. All changes and amendments received by this way shall constitute an integral part of this Agreement.

Article 17. Concluding Provisions

1. The Contracting Parties shall notify each other in writing of the completion of internal procedures necessary for the entry into force of this Agreement. The Agreement shall enter into force on the thirtieth day following the date of receipt of the last notification.

2. This Agreement shall remain in force for a period of ten (10) years and shall thereafter remain in force on the same terms until either Contracting Party notifies the other in writing of its intention to terminate the Agreement in twelve (12) months.

3. In respect of investments made prior to the termination of this Agreement, the provisions of Articles 1 to 15 of this Agreement shall continue to be effective for a period of ten years from the date of termination.

IN WITNESS WHEREOF the undersigned, duly authorized thereto by respective Governments, have signed this Agreement.

Done in duplicate at Tbilisi, this 5 day of October 2005, in the Georgian, Latvian and English languages, all texts being equally authentic.

In case of any divergence of interpretation, the English text shall prevail.

For the Government of Georgia

For the Government of the Republic of Latvia