

# **Agreement between the Government of the Republic of Belarus and the Government of Ukraine on the promotion and mutual protection of investments (concluded in Kiev 14.12.1995)**

The Government of the Republic of Belarus and the Government of Ukraine (hereinafter referred to as "Contracting Parties"),

Desiring to reinforce economic cooperation on a long term basis for the mutual benefit of both States,

Expressing the intention to create and maintain favorable conditions for investors of one Contracting Party in the territory of the other Contracting Party,

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

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" means every kind of financial, material and other property and intellectual values invested in connection with economic activities of investors - individuals and legal entities - of one Contracting Party in the territory of the other Contracting Party in accordance with the last will and the existing legislation to cover in particular, but not exclusively:

- a) movable and immovable property and any other property rights, such as rights of lien, pledge, rights of security for the loan and similar rights;
- b) share, shares, bonds, debt obligations of legal entities, securities, and any other forms of participation in companies;
- c) requirements for the sums of money or any performance obligations that have an economic value associated with an investment;
- d) intellectual property rights, including copyrights, trademarks, patents, industrial designs, technical processes, "know-how", trade secrets, trade names and "goodwill" associated with an investment;
- e) any right to engage in economic activities, including the rights to exploration, development and exploitation of natural resources.

Any change of the form in which assets are invested shall not affect their character as investments.

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

- a) The term "natural person" with respect to either Contracting Party means any natural person who is a citizen of either Contracting Party in accordance with its legislation;
- b) The term "legal person" in relation to any Contracting Party means any institution established in accordance with the laws of each Contracting Party, and who has the right to invest in the territory of the other Contracting Party.

3. The term "returns" means the monetary amounts provided for by national legislation and the resulting investment and includes, in particular, but not limited to: income, interest, capital gains, shares, dividends, royalties and fees for services.

4. The term "territory" means with respect to each Contracting Party the territory under its sovereignty as well as the sea, seabed and subsoil thereof, over which the Contracting Party exercises, in accordance with international law, sovereignty,

sovereign rights or jurisdiction.

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

The terms of this Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the applicable law of the Contracting Party in whose territory the investments are carried out both before and after the entry into force of this Agreement.

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

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

1. Each Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its legislation.
2. Investments of investors of either Contracting Party shall enjoy fair and equal treatment and receive the full protection and security in the territory of the other Contracting Party.

## **Article 4. National Treatment and Most Favored Nation Treatment**

1. Each Contracting Party shall provide in its territory investments by investors of the other Contracting Party treatment which is fair and equitable and not less favorable than that which it accords to investments of its own investors or investments of investors of any third state.
2. Each Contracting Party shall in its territory to provide investors of the other Contracting Party in relation to the management, maintenance, use, income generation and disposal of their investments treatment which is fair and equitable and not less favorable than that it accords to its own investors or investors of any third state.
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 investors of the other Contracting Party the benefit of any treatment, benefits or privileges arising from:
  - a) any customs union, free trade area, monetary union or similar international agreements that affect the investment mode of cooperation, or other forms of regional cooperation to which either Contracting Party is or may become;
  - b) any international agreement or arrangement relating wholly or mainly to taxation.

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

1. Where investments of investors of either Contracting Party suffer losses due to war, armed conflict, national emergency, revolution, insurrection, conspiracy, or other similar activities on the territory of the other Contracting Party, he shall be accorded by the latter Contracting Party in respect of property restoration, reparation, compensation or other settlement treatment no less favorable than that which the latter Contracting Party shall accord to investors of any third state.
2. Do not interfering with the conditions of paragraph 1 of this Article, investors of one Contracting Party who, during any event it was mentioned in that paragraph, suffer losses in the territory of the other Contracting Party, which arise as a result of:
  - a) requisitioning of their property or the last forces authorities;
  - b) the destruction of their own forces or authorities of the latter, which was not caused by military action or was not required necessity of the situation,

It will be given a fair and adequate compensation for the losses incurred during the period of requisitioning or as a result of destruction of property. Payments that arise, will be freely transferable in freely convertible currency without undue delay.

## **Article 6. Expropriation**

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subject to any other measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except in the public interest, the latter Contracting Party. Expropriation is carried out in accordance with the procedure established by the legislation of the latter Contracting Party, on a non-discriminatory basis and will be subject to conditions on the payment of immediate, adequate and effective compensation. The amount of

compensation to be paid in the currency in which the investments were made, or in any other currency acceptable to the investor, in accordance with the applicable law of the Contracting Party in whose territory took place the expropriation and will be the market value of the expropriated investment at the time immediately prior to the implementation of expropriation or its disclosure, depending on whether that was the case before. Payment will include interest accrued on the basis of LIBOR rate from the date of expropriation, shall be paid without unreasonable delay, be effectively realizable and can be transferred without restriction in a convertible currency.

2. The victim investor will be entitled to an immediate review of the judicial or other independent authority of the expropriating Contracting Party, of his case and an assessment of its investments according to the principles set out in this Article.

3. If a Contracting Party expropriates the investments made in the form established in accordance with its legislation, a legal entity in which the investor of the other Contracting Party has a financial interest, the compensation pursuant to paragraph 1 of this Article shall be paid to investors of the other Contracting Party to the extent of its financial participation in these investments.

## **Article 7. Transfers**

1. The Contracting Parties shall guarantee the transfer of payments relating to the investment and income, in accordance with the laws of the Contracting Parties. Translations will be made in the convertible currency in which the investment was originally made or, at the investor's consent, in another currency, without any restrictions and without undue delay. Such transfers would include, in particular, but not exclusively:

- a) capital and additional sums of money to support or increase the investment;
- b) income, interest, dividends and other current income;
- c) payments, which are carried out according to the loan agreements related to investments;
- d) royalties and fees for services;
- e) proceeds from the sale or liquidation of investments;
- f) earnings of natural persons associated with investments, in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

2. For the purposes of this Agreement will be used exchange rates which are established under the laws of the Contracting Parties and which are valid for the current agreement on the date of transfer, unless agreed otherwise.

## **Article 8. Subrogation**

1. If a Contracting Party or its authorized agent makes payments to its own investors under warranty, which it has granted in connection with investments in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

- a) the transfer by law or legal agreement in the country of any rights or the rights of the investor's requirements to the former Contracting Party or its authorized reseller, and since then,
- b) that the first Contracting Party or its authorized intermediary has acquired the right to use the result of subrogation rights and to put forward this demand and the investor will assume the obligations associated with that investment.

2. The resulting subrogation rights or claims shall not exceed the rights and requirements of the investor.

## **Article 9. Disputes between the Contracting Party and an Investor of 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 investments in the territory of that Contracting Party will be subject to negotiation between the parties to the dispute.

2. If any dispute between an investor of one Contracting Party and the other Contracting Party can not be thus resolved during the period of six months from the date of the written notice, the investor receives the right to refer the dispute for choice:

- a) the court and / or arbitration in accordance with the applicable law of the Contracting Party;

b) the International Centre for Settlement of Investment Disputes (ICSID) established by the Washington Convention of 18 March 1965 for the resolution of disputes relating to investments between States and Nationals of other States; or

c) the arbitral tribunal "ad hoc", that is, if the parties to the dispute agree otherwise, shall be established and act in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree in writing to change the rules of this Regulation. The arbitration decision shall be final and binding on both parties to the dispute.

Set out in paragraph 2 (b) and 2 (c) the procedure for the resolution of disputes between an investor of one Contracting Party and the other Contracting Party may be provided to the application only after the permission of the domestic judicial procedures.

## **Article 10. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be resolved through mutual consultations and negotiations.

2. If such a dispute can not be resolved in the above manner within six months after it began, at the request of a Contracting Party, it will be submitted to the Arbitration Court in accordance with the provisions of this Article.

3. Such an arbitral tribunal will be established for each individual case as follows. Within two months from the date of receipt of the arbitration request, each Contracting Party shall appoint one member of the tribunal. These two members then determine national of a third state, who by mutual consent of the Contracting Parties shall be appointed Chairman of the Court. Designation of the President must take place no later than two months from the date of appointment of the other two members.

4. If the necessary appointments have not been made within the periods specified in paragraph 3 of this Article, and if the Contracting Parties agree otherwise, any Contracting Party may request that a product of any necessary appointments to the President of the International Court of Justice. If the President of the International Court of Justice is a national of either Contracting Party or if he is unable to carry out the above steps for other reasons, the right product will be provided with the necessary appointments Vice-President of the International Court of Justice. If the Vice-President of the International Court of Justice, in turn, is a citizen of one of the Contracting Parties or he is unable to carry out the above actions, the request for the necessary work assignments will be addressed to the next-highest member of the International Court of Justice who is not a national of either Contracting Party.

5. The arbitral tribunal established under this Article shall take decisions by majority vote. These decisions are binding on both Contracting Parties. Each Contracting Party shall bear the costs of its appointed member of the tribunal and the costs associated with its participation in the arbitration proceedings; Chairman of the costs and unaccounted costs will be divided equally between the Contracting Parties. The Court may, however, in its decision to establish one of the Contracting Parties to the large share of the costs, and the decision will be binding on both Contracting Parties. The Court itself defines the rules of their work.

## **Article 11. Application of other Rules and Special Commitments**

If the domestic law provisions of each of the Contracting Parties or the existing international obligations, or which may come into force in the future for one of the Contracting Parties to provide general or specific rules according to which the investments of investors of the other Contracting Party shall enjoy more favorable treatment than that which is set this agreement, these rules shall prevail in relation to this agreement to the extent and to the extent to which, and because they are more favorable.

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

1. The Contracting Parties agree to provisionally apply the provisions of this Agreement from the date of signature in the part, which contains no provisions other than those provided for by the current legislation of each Contracting Party.

2. This Agreement shall enter into force from the date of receipt of the last notification of the completion of each of the Contracting Parties of internal procedures necessary for the entry into force of this Agreement.

3. The Agreement shall cease to have effect twelve months from the date of written notification of one of the Contracting Parties of its intention to terminate it.

4. The provisions of this Agreement after the expiry of its validity will be applied to investments, concluded, but not

implemented during the period of its validity.

Done at Kiev, December 14, 1995, in two original copies, each in the Belarusian, Ukrainian and Russian languages, all texts being equally authentic. In case of divergence of interpretation, preference is given to the text in Russian.

For the Government of the Republic of Belarus

M. Chigir