

# **Agreement between the Government of Ukraine and the Government of the Republic of Equatorial Guinea on the promotion and reciprocal protection of investments**

The Government of Ukraine and the Government of the Republic of Equatorial Guinea, hereinafter referred to as "the Contracting Parties",

Desiring to strengthen economic cooperation for the mutual benefit of both States,

Intending to create and maintain favorable conditions for investments of investors of one State in the territory of another State, and

Recognizing that the promotion and mutual protection of investments under this Agreement stimulate business initiatives in this field,

Have agreed as follows:

## **Article 1. Definition**

For the purposes of this Agreement:

1. The term "investment" covers any type of asset, invested in connection with economic activities by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the legislation of the latter and includes, but is not limited to:

(A) movable and immovable property, as well as any other proprietary rights such as mortgages, liens, lending and similar rights;

(B) shares, securities and debt obligations of companies or any other form of participation in a company;

(C) requirements for money or any performance

Obligations that have an economic value associated with the investment;

(D) objects of property rights of intellectual property including copyrights, trade marks, patents, designing

Industrial objects, technical processes, know - how, trade secrets, commercial (firm) name, and also that business reputation;

(E) concessions granted by law, administrative act or contract by a competent authority, including concessions for the search, development, extraction or exploitation of natural resources.

Any change in the form in which the assets are invested will not affect their character as an investment.

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" means any individual having the nationality of either Contracting Party in accordance with its laws;

(B) the term "legal entity" means in relation to the Contracting Parties:

- Any organization created in accordance with the applicable laws of the Contracting Parties and recognized as a legal entity in accordance with its law;

- Any body or person who does not have legal personality status but is recognized by law as a company.

3. The term "proceeds" means amounts received as a result of an investment and, in particular, but not exclusively, include profits, interest, capital gains, stocks, dividends, royalties, and service fees.

4. The term "territory" means, in respect of each Contracting Party, the territory under the sovereignty of its State and the exclusive (maritime) economic zone and the continental shelf, over which this Contracting Party carries out, in accordance with international law, sovereignty, sovereignty or jurisdiction.

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

1. Each Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Party to invest in its territory and recognize such investments in accordance with its legislation.

2. Investments of investors of either Contracting Party shall at all times be fair and equitable and receive full protection and security in the territory of the State of the other Contracting Party.

## **Article 3. Non-discrimination Regime**

1. Each Contracting Party shall, in its territory, grant investments of investors of the other Contracting Party to a fair and equitable treatment no less favorable than that accorded to investments and income of investors of any third country.

2. Each Contracting Party shall, in its territory, provide investors of the other Contracting Party with respect to the management, maintenance, use, receipt of profits and disposal of its investments, a treatment that is fair and equitable and less favorable than that accorded to investors by any investor. Which third country.

3. The provisions of paragraphs 1 and 2 of this Article shall not be interpreted to oblige one Contracting Party to extend to investors the benefit of any other benefit from any regime, preferential treatment or privilege that may be extended by the latter Contracting Party arising out of with:

A) any customs union or free trade area or monetary union or similar international agreements leading to such unions, or entities or other forms of regional cooperation to which either Contracting Party is or may become a party;

(B) any international agreement or arrangement concerning wholly or mainly taxation.

## **Article 4. Compensation for Loss**

1. When investments of investors of either Contracting Party are affected by a war, armed conflict, national emergency, coup, uprising, rebellion, or other similar events in the territory of the other Contracting Party, they will be granted the last resort, with respect to restitution, reimbursement Compensation or other solution no less favorable than that accorded by the last Contracting Party to its own investors or investors of third countries in accordance with applicable law.

2. Without prejudice to the provisions of paragraph 1 of this Article, investors of the same Contracting Party who, during any of the events referred to in this paragraph, suffer losses in the territory of the other Contracting Party arising from:

(A) requisitioning of their property by its authorities;

B) the destruction of their property by its forces or authorities, which was not caused by military actions, or was not required by the necessity of a situation,

Fair and adequate compensation will be provided for losses incurred during the requisition period or as a result of the destruction of the property.

The emerging payments will be free of charge in a freely convertible currency, after payment of taxes, fees and other mandatory payments, without delay.

## **Article 5. Expropriation**

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") on the territory of the State of the other Contracting Party, except for public purposes. Expropriation will be conducted under due process, on a non-discriminatory basis and accompanied by conditions for the payment of immediate, adequate and effective compensation. Such compensation will be equal to the market price of investments, at a time when the expropriation or threat of expropriation has become commonplace, will include a percentage from the date of expropriation, will be done

without delay, will be such that it is effectively implemented and freely transferred in a freely convertible currency.

2. An injured investor shall have the right to review by a judicial or other independent authority of this Contracting Party his case and the assessment of his investments in accordance with the national legislation of the Contracting Parties and the principles set out in this Article.

3. The provisions of paragraph 1 of this Article shall also apply when a Contracting Party expropriates the assets of a company which has acquired the status of a joint-stock company or is founded in accordance with the law in force in any part of its territory and in which the investors of the other Contracting Party have shares.

## **Article 6. Transfers**

1. The Contracting Parties guarantee the transfer of payments relating to investment and income after tax, fees and other mandatory payments. Transfers will be made in freely convertible currency, without any restrictions and unreasonable delay. Such remittances include, but are not limited to:

(A) capital and additional amounts to support or increase investment;

(B) Profit, interest, dividends and other current income;

(C) funds for loan repayment;

(D) royalties or service fees;

(E) proceeds from the sale or liquidation of investments;

(F) earnings of individuals in accordance with the legislation of the Contracting Party in which the investments were made.

2. For the purposes of this Agreement, the exchange rates will be official exchange rates valid for current transactions on the date of transfer, unless otherwise agreed.

## **Article 7. Subrogation**

1. If a Contracting Party or its designated intermediary makes payments to its own investors in accordance with the guarantee given in connection with an investment in the territory of the other Contracting Party, the Contracting Party shall recognize:

(A) the transfer, either by law or by lawful agreement in that country, of any right or claim of an investor to the prior Contracting Party or its designated intermediary,

(B) that the prior Contracting Party or its designated intermediary has the right, as a result of subrogation, to exercise the rights and make claims of that investor and to transfer the obligations associated with this investment.

2. Obtained as a result of the subrogation of rights or claims will not go beyond the primary rights and requirements of the investor.

## **Article 8. Settlement of Investment Disputes between a 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 an investment in the territory of that other Contracting Party shall be the subject of negotiations between the parties to the dispute.

2. If any dispute between the investor of one Contracting Party and the other Contracting Party can not be so resolved within a period of six months, the investor will be entitled to refer the case to either:

(A) The International Center for the Settlement of Investment Disputes (ICSID), referring to the relevant provisions of the Convention on Settlement of Investment Disputes between States and Citizens of Other States opened for signature in Washington, DC, March 18, 1965, if Both Contracting Parties have become parties to this Convention.

(B) the arbitrator or the international arbitration tribunal at AOS, established in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree to change these Rules in writing. Arbitration decisions will be final and binding on both parties to the dispute.

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

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, wherever possible, be resolved by diplomatic channels.
2. If such a dispute can not be so resolved within six months, it shall, at the request of any Contracting Party, be referred to the Arbitral Tribunal in accordance with the provisions of this Article.
3. The Arbitral Tribunal shall be established for each individual case as follows. Within two months after receiving an application for an arbitral award, each of the Contracting Parties shall appoint one member of this Court. These two members shall then elect a citizen of a third State, who, after approval by the Parties, will be appointed Chairman of the Court (hereinafter referred to as the "Chairman"). The chairman will be appointed within three months from the date of appointment of the other two members.
4. If, during any of the periods specified in paragraph 3 of this Article, the necessary appointments have not been made, the President of the International Court of Justice will be invited to make the appointment of the Chairman. If it turns out that he is a national of either Contracting Party or if other reasons prevent him from fulfilling the specified function, the Vice President will be invited to make the necessary appointments. If it turns out that the Vice-President is also a national of a State of either Party or for other reasons can not perform this function, a member of the International Court of Justice, following a seniority who is not a national of a State of any Contracting Party, will be invited to do so. Necessary appointments.
5. The Arbitral Tribunal will decide by a majority of votes. Such decisions shall be binding on each of the Contracting Parties. Each Contracting Party shall bear the costs of its members of the court and its representation in the arbitration proceedings; The costs of the Chairman shall be borne in equal parts by the two Contracting Parties. The Arbitral Tribunal will determine its own procedure.

## **Article 10. Application of other Rules and Special Obligations**

1. If a matter is regulated simultaneously by this Agreement and another international agreement to which both parties are a party, nothing in this agreement shall prevent the Contracting Parties or any of its investors who have investments in the territory of the other Contracting Party to enjoy the benefits of those rules that are more Favorable in relation to his case.
2. If the treatment to be provided by one Contracting Party to investors of the other Contracting Party in accordance with its laws or other special provisions of the contracts is more favorable than that accorded by this Agreement, it will be granted more favorable.

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

1. The terms of this Agreement shall apply to investments made by investors of one Contracting Party in the territory of the State of the other Contracting Party, both before and after the entry into force of this Agreement.
2. The provisions of this Agreement shall not apply to disputes arising out of investments between the investor of the State of one Contracting Party and the other Contracting Party prior to the entry into force of this Agreement.

## **Article 12. Changes and Additions**

1. The provisions of this Agreement may be supplemented or amended by mutual agreement of the Contracting Parties.
2. Such additions or changes shall be made by protocols that will form an integral part of this Agreement.

## **Article 13. Entry Into Force, Duration and Termination**

1. Each Contracting Party shall notify the other of the completion of the procedures required by its laws for the entry into force of this Agreement. This Agreement shall come into force on the date of receipt of the second notice.
2. This Agreement shall remain in force for a period of ten years and continue to remain in force until one year before the beginning of the initial or any subsequent period, either Contracting Party shall not notify the other Contracting Party in writing of its intention to terminate this Agreement.
3. In respect of investments made prior to the termination of this Agreement, the terms of this Agreement shall remain in

force for a period of ten years from the date of termination.

In witness whereof, the undersigned, being duly authorized, have signed this Agreement.

Done in Kyiv on December 15, 2005 in duplicate, in the Ukrainian, Spanish and English languages, all texts being equally authentic.

For the Government of Ukraine

For the Government of the Republic of Equatorial Guinea

(signature)

(signature)

Andrew Bereznyi

José Esono Mića Akeng