

# **AGREEMENT between the Government of Ukraine and the Government of Georgia on encouragement and mutual protection of investments**

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

Desiring to intensify economic cooperation on a long term basis for the mutual benefit of both Contracting Parties,

Intending 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 initiatives in this field,

Agreed on the following:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" would cover any kind of asset invested in connection with economic activities by an investor of one Contracting Party in the territory of the other Contracting Party under current legislation and the latter include in particular, but not exclusively:

- a) movable and immovable property as well as other rights such as mortgages, rights provision of loans and other similar rights;
- b) shares, stocks and debentures of legal persons or property share of legal entities;
- c) loans, loans, trust bank and financial fees and other cash requirements related to investments;
- d) intellectual property rights, including copyrights, trademarks, patents, industrial designs, processes, know-how, trade secrets, trade names and goodwill associated with an investment;
- e) licenses and permits under the law, including concessions for exploration, production, development and exploitation of natural resources.

Any change in the form in which assets were invested, will 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" means any natural person who is a national of a Contracting Party under the laws of that Contracting Party;
- b) The term "legal person" shall mean with regard to either Contracting Party any entity, company or organization created under the current legislation of each Contracting Party and eligible to invest in the territory of the other Contracting Party.

3. The term "returns" means monetary amounts yielded by an investment and shall include in particular, but not exclusively, profits, interest, capital gains, dividends, royalties and fees.

4. The term "territory" means in respect of each Contracting Party in the territory under its sovereignty and the sea and submarine areas over which that Contracting Party shall, in accordance with international law, sovereignty rights and jurisdiction.

## **Article 2. Application of the Agreement**

Terms of this Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party both before and after the entry into force of this Agreement.

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

1. Each 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 laws and regulations.
2. Investments of investors of either Contracting Party shall be accorded fair and equitable treatment, full protection and security in the territory of the other Contracting Party.

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

1. Each Party shall provide in its territory investments by investors of the other Contracting Party, which is fair and equitable and not less favorable than that it accords to investments of its own investors or to investments of investors of any third state.
2. Each Party shall provide in its territory to investors of the other Contracting Party in respect of the management, maintenance, use, revenue and disposition of their investment regime that is fair and equitable and not less favorable than that Contracting Party accords its own investors or investors of any third state.
3. The provisions of paragraphs 1 and 2 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, preference or privilege which may be extended by the former Contracting Party arising from:
  - a) any customs union or free trade area or a monetary union or similar international agreements affecting the investment regime of cooperation or other forms of regional cooperation to which either Contracting Party is or may become a party;
  - b) any international agreement or arrangement relating wholly or mainly to taxation.

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

1. When investments by investors of either Contracting Party suffer losses owing to war, armed conflict, state of national emergency, revolt, insurrection, riot or other similar events in the territory of the other Contracting Party, they shall be the latter Contracting Party treatment, with respect to restitution, compensation, compensation or other settlement, not less favorable than that which the latter Contracting Party shall accord to investors of any third state.
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 losses in the territory of the other Contracting Party resulting from:

(A) requisitioning of their property by its forces or authorities;

(B) destruction of their property by its forces or authorities which was not caused in combat action or were required necessity of the situation,

Shall be accorded just and adequate compensation for the losses sustained during the requisition or the destruction of property.

Resulting payments shall be freely transferable in freely convertible currency without delay.

### **Article 6. 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 if it does not require public interests. Expropriation conducted by due process of law, without discrimination and accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment when the expropriation or impending expropriation became public knowledge, shall include interest LIBOR from the date of expropriation will be paid in the currency, which was made investment or by agreement with any other acceptable investor currency will be the effectively implemented and carried out without delay.

2. The investor will have the right to prompt review by a judicial or other independent authority of that Contracting Party of its case and evaluate its investment in accordance with the principles set out in this Article.

3. The provisions of paragraph 1 of this Article shall also apply in cases where a Party expropriates the assets of a company that received the status of the company, or organized under applicable law in any part of its territory the right, and in which investors of the other Contracting Party own shares.

## **Article 7. Transfers**

1. The Contracting Parties shall guarantee the transfer of payments related to investments and returns in accordance with applicable law of the Contracting Parties. Transfers shall be made without any restriction and delay. Such transfers include in particular, but not exclusively:

- a) capital and additional amounts to maintain or increase investments;
- b) profits, interest, dividends and other current income;
- c) payments pursuant to loan agreements;
- d) royalties or fees;
- e) proceeds of sale or liquidation of the investment;
- f) earnings of natural persons under the laws and regulations of the Contracting Party received by them in connection with an investment in the territory of the Contracting Party.

2. For the purposes of this Agreement, exchange rate shall be the official rates effective for the current transactions at the date of transfer, unless otherwise agreed.

## **Article 8. Subrogation**

1. If a Contracting Party or its agency makes payment to its own investors under guarantees that it provided in connection with 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 the fact
- b) that the former Contracting Party or its designated agency is entitled by virtue of subrogation to the rights and claims of that investor and takes over the obligations related to the investment.

## **Article 9. 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 the Contracting Party will be subject to negotiations 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 settled within six months from the date of submission of the written request, the investor will be entitled to submit the case:

- a) to the judicial authority of the Contracting Party in which the investment or
- b) the International Centre for Settlement of Investment Disputes (ICSID), referring to the relevant provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature in Washington, DC, March 18, 1965, if both Parties have become a party to this Convention, or
- c) to an arbitrator or international ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree in writing to modify these Rules. The arbitration shall be final and binding on both parties to the dispute.

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

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible,

be settled by mutual consultation or negotiation.

2. If the dispute can not be thus settled within six months after it began, it at the request of either Contracting Party be submitted to an arbitral tribunal under this Article.

3. The Arbitral Tribunal shall be constituted for each individual case in the following way: within two months of receipt of the request for arbitration, each Contracting Party shall appoint one member of the Court. These two members shall then select a national of a third State, who on approval of the Contracting Parties shall be appointed Chairman of the Tribunal (hereinafter referred to as the "Chairman"). The Chairman shall be appointed within three months from the date of appointment of the second member.

4. If within the periods specified in paragraph 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 UN International Court of Justice to make the appointments. If it turns out that he is a citizen of either Contracting Party, or if otherwise prevented from discharging the said function, the Vice President shall be invited to make the appointments. If you find that Vice-President is a national of either Contracting Party or prevented from discharging the said function, the member of the International Court of Justice next in seniority who does not have citizenship of either Contracting Party shall be invited to make the appointments and can smoothly perform the function.

5. The Arbitral Tribunal shall reach its decision by majority vote. Such decision shall be binding on each Contracting Party. Each Contracting Party shall bear the costs of its own arbitrator and its representation in the arbitral proceedings; the costs of the Chairman and other costs imposed equally on both Contracting Parties.

However, the Arbitration Court in its judgment can determine which of the Contracting Parties will put most of the costs, and the decision will be binding on both Contracting Parties.

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

1. Where a matter is governed both by this Agreement and by another international agreement to which both Contracting 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 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 and regulations or other specific provisions of contracts is more favorable than that accorded by this Agreement, will be given more favorable.

## **Article 12. Amendments**

In this Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall enter into force when each Contracting Party notifies the other Contracting Party that it adjusted all relevant formalities that impede the entry into force of the amendment.

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

1. Each Party shall notify in writing the other Contracting Party of the completion of the procedures required under its applicable law for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last report.

2. This Agreement shall remain in force for a period of ten years. Its validity of every automatically extended for the next 5 years, unless either Contracting Party at least six months before the expiry of the relevant period notifies the other Contracting Party in writing of its intention to terminate the Agreement.

3. In respect of investments made prior to the termination of this Agreement, its provisions (Article 1 - 11) remain in force for ten years from the date of termination of its force.

Signed in the city. Tbilisi, January 9, 1995 in two originals, each in Ukrainian, Georgian and Russian languages, all texts being equally authentic.

For the purposes of interpretation of this Agreement, the Russian language shall prevail.