

# **Agreement between the Cabinet of Ministers of Ukraine and the Government of Turkmenistan on the promotion and mutual protection of investments**

The Cabinet of Ministers of Ukraine and the Government of Turkmenistan, hereinafter referred to as "the Contracting Parties",

Desiring to create favorable conditions for the expansion of economic cooperation between the Contracting Parties,

Intending to create and maintain favorable conditions for mutual investment,

Recognizing that the attraction and mutual protection of investments will contribute to the strengthening of entrepreneurial activity and a significant increase in the contribution to the development of economic relations between the Contracting Parties,

Have agreed as follows:

## **Article 1. Definitions**

For the purpose of this Agreement, the following terms mean:

1. The term "investment" covers all types of values invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with its national law and includes, but are not limited to:

(a) movable and immovable property (buildings, structures, equipment and other tangible assets) and related property rights such as mortgages, mortgage rights, collateral loans, etc.;

(b) Cash, stocks, deposits and other securities;

(c) Monetary claims and rights to fulfill the contractual obligations;

(d) Intellectual property rights, including copyrights, inventions, patents, industrial designs and designs, trademarks, trade names, originals, technology, know-how and others;

(e) The right to engage in economic activity, including the right to concession, which is expressed in the exploration, development, extraction or exploitation of natural resources, other objects of exploitation, which are obtained by law or contract.

2. The term "investor" means, in relation to each of the Contracting Parties:

(a) an individual who is a citizen of either Contracting Party and carries out investment in the territory of the other Contracting Party in accordance with its laws;

(b) A legal person, other companies or associations with or without a legal entity established in accordance with the laws of any Contracting Party which has its seat in its territory and carries out investment in the territory of the other Contracting Party.

3. The term "income" means the amount received as a result of an investment, in particular, but not exclusively: profit, dividends, royalties, commission fees.

4. The term "territory" means:

(a) In relation to Turkmenistan - the state territory of Turkmenistan, as well as areas determined in accordance with international law, where activities may be carried out in relation to which Turkmenistan's investment legislation applies ;

(b) In relation to Ukraine, the areas covered by land borders, as well as the sea, seabed, and its subsoil, which are beyond the territorial waters over which Ukraine exercises its sovereign rights and jurisdiction in accordance with its laws, rules and international law.

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

1. Each of the Contracting Parties shall facilitate and create favorable conditions for investors of the other Contracting Party to invest in its territory in accordance with its national law.

2. Investments as defined in paragraph 1 of Article 1 and related revenues shall enjoy full protection under this Agreement. Without prejudice to the provisions of paragraph 1 of this Article, the same applies to all income received in the case of reinvestment of such proceeds. Expansion, change or transformation of investments made under the law will not affect their character as investments.

## **Article 3. National Investment Regime**

1. Each Contracting Party undertakes to provide in its territory, in respect of investments, investors of the other Contracting Party and investment activities of the other Contracting Party a fair and equitable treatment which excludes the application of discriminatory measures that could prevent investors from managing and disposing of investments.

2. The regime referred to in paragraph 1 of this Article shall be no less favorable than that accorded to investments of national investors or investors of any third State and activities related to such investments.

3. The provisions of paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to distribute to investors of the other Contracting Party the privileges and privileges which a Contracting Party grants or will provide in future to investors of any third State or their investments on the basis of:

(a) Its participation in a free trade area, a customs or economic union, an organization of economic mutual assistance, or an international agreement providing for privileges and privileges similar to those accorded by a Contracting Party to the participants of these organizations;

(b) An international agreement on avoidance of double taxation or other arrangement on tax matters;

(c) Agreements on border trade issues.

## **Article 4. Compensation for Losses**

1. Investors of one Contracting Party whose investments have suffered losses in the territory of the other Contracting Party due to war or other armed conflict, state of emergency, coup d'état or any other similar phenomenon shall be accorded in the territory of the last Contracting Party no less favorable treatment in respect of indemnity and indemnity than that which it grants to national investors or investors of any third State. Payments made here will be convertible and freely transferable.

2. Without prejudice to the provisions of paragraph 1 of this Article, investors of one Contracting Party who, during any of the situations specified in this clause, have suffered losses in the territory of the other Contracting Party arising from the requisitioning and destruction of their property by its authorities which were not caused military actions or were not required by the necessary situation, have the right to prompt and adequate compensation.

## **Article 5. Expropriation**

1. Investments by investors of one of the Contracting Parties in the territory of the other Contracting Party shall not be nationalized, expropriated or subjected to other measures having similar nationalization or expropriation consequences (hereinafter referred to as "expropriation"), except when such measures are used in the public interest, which are in accordance with the procedure established by law, on a non-discriminatory basis and accompanied by the payment of prompt, adequate and effective compensation.

2. The compensation specified in paragraph 1 of this Article is calculated on the basis of current market prices and / or a valid assessment certified by an recognized auditor or audit firm, is determined at the time of termination of ownership, paid without delay, and must be convertible and freely transferable . Compensation must be paid in the currency in which the investment was made or in any other currency acceptable to the investor, with interest accrued at the rate of LIBOR from the moment the right to such compensation arises and until its payment.

3. Expropriation victims shall have the right, in accordance with the law of the Contracting Party that expropriated, to promptly examine their cases by a judicial or other independent authority of that Contracting Party and determination of the value of its investments, in accordance with the principles set out in this Article.

4. If one Contracting Party expropriates investors' investments in accordance with paragraph 2 of Article 4 in a company created or established in accordance with applicable law in any part of its territory and in which investors of the other Contracting Party own shares or other property rights, then it will be guaranteed the application of the provisions of paragraph 1 of this Article to the extent necessary to ensure prompt, adequate and effective compensation in relation to investments by investors of the other Contracting Party possessing such a or other property rights.

## **Article 6. Transfers**

1. Each Contracting Party shall guarantee investors of the other Contracting Party all rights to the free transfer of payments relating to investment and income from investment activities in accordance with the applicable laws of the Contracting Parties. Transfers will be made without any restrictions or delays. Such transfers will include, but are not limited to:

(a) The capital and other monetary amounts necessary to support and increase investment;

(b) Income;

(c) funds from full or partial liquidation of investments;

(d) Funds from repayment of loans on the basis of investments;

(e) the indemnifications referred to in Articles 4 and 5 of this Agreement.

2. For the purposes of this Agreement, exchange rates shall be deemed to be official exchange rates which, in accordance with the applicable laws of the Contracting Parties, are valid for current transactions on the date of transfer, unless otherwise agreed.

## **Article 7. Subrogation**

1. If one Contracting Party or its authorized body makes payments to its investors under a guarantee given in connection with an investment in the territory of the other Contracting Party, the other Contracting Party shall recognize:

(a) The transfer, in accordance with the law or in accordance with a legal transaction, of any rights or claims of the investor of the first Contracting Party or its authorized body, and

(b) That the first Contracting Party or its authorized body has the right, as a result of the subrogation, to exercise the right and fulfill the requirements of the investor and assume obligations relating to investment.

2. Subrogated rights or claims will not exceed the initial rights or claims of the investor.

3. The subrogated rights and obligations of the insured investor shall also apply to the transfer of payments effected in accordance with Article 6 of this Agreement.

## **Article 8. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall be settled, if possible, through negotiations between the Contracting Parties.

2. If the dispute referred to in paragraph 1 of this Article can not be settled between the Contracting Parties within six months from the date one of the Contracting Parties has notified in writing to the other Contracting Party, it shall, at the request of one of the Contracting Parties, be transferred to the Arbitration Court.

3. The arbitral tribunal referred to in paragraph 2 of this Article shall be created on an ad hoc basis for each individual case as follows: Within two months after receipt of the written request for arbitration, each Contracting Party shall appoint one member to this Court. Within two months, each member shall, by mutual consent, select a third arbitrator, a citizen of a third State, who, after approval by the Contracting Parties, will be appointed Chairman of the Court.

4. If, within the time limits specified in paragraph 3 of this Article, the appointment is not made, each Contracting Party will have the opportunity, in the absence of any other arrangement, to invite the President of the International Court of Justice to make the necessary appointments. If the President is a citizen of one of the Contracting Parties, or if other reasons

prevent him from fulfilling the specified function, the Vice-Chairman shall implement the necessary appointments. If it turns out that the Deputy Chairman is also a citizen of one of the Contracting Parties or that he cannot perform the specified function, the necessary appointments should be made a member of the International Court of Justice, following a seniority, who is not a national of either of the Contracting Parties.

5. The Arbitral Tribunal shall reach its decisions on the basis of the provisions of this Agreement, as well as on the basis of generally accepted norms of international law. The arbitral tribunal will make its decisions by a majority of votes. His decisions are final and binding on both Contracting Parties. The Arbitral Tribunal establishes its own dispute resolution procedure.

6. Each of the Contracting Parties shall bear the costs of its members of the court and its representation in the arbitration proceedings. The expenses of the Chairman and other expenses shall be borne in equal proportions by both Contracting Parties .

However, the Court may, by its decision, determine another allocation of costs.

## **Article 9. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Disputes between an investor of one Contracting Party and another Contracting Party in connection with the obligations of the latter arising out of this Agreement with respect to investments made by an investor of the first Contracting Party shall be settled, as far as possible, through negotiation.

2. If the disputes referred to in paragraph 1 of this Article can not be settled by negotiation within six months, both parties to the dispute may refer the dispute to the competent court of the Contracting Party which is a party to the dispute.

3. Instead of applying paragraph 2 of this Article, the investor of each Contracting Party may refer the dispute to an arbitral award:

(a) Ad hoc Arbitral Tribunal in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);

(b) The International Center for Settlement of Investment Disputes, established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature in Washington, DC, May 18, 1965 (Convention ICSID), if when both Contracting Parties became parties to this Convention.

4. The decisions of the Arbitral Tribunal will be final and binding on both parties in the dispute and will be enforced in accordance with the laws and regulations of the Contracting Parties.

Each Contracting Party shall ensure the recognition and enforcement of arbitral awards in accordance with its laws and regulations.

## **Article 10. Application of other Rules**

If the provisions of the legislation of either Contracting Party or an obligation under international law existing at that time or established in the future between the Contracting Parties in addition to this Agreement contain rules, both general and specific, which grant the right to invest investors of the other Contracting Party to a more favorable regime than that provided for in this Agreement, such rules will prevail over this Agreement to the extent that they are more favorable.

## **Article 11. Relations between the Contracting Parties**

The representatives of the Contracting Parties shall, if necessary , consult in relation to matters relating to this Agreement. Consultations will be held on the proposal of one of the Contracting Parties at a time and place, which are cleared through diplomatic channels.

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

1. This Agreement shall apply to all 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 before and after the entry into force of this Agreement.

2. This Agreement may be amended and supplemented by the written consent of the Contracting Parties.

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

1. Each of the Contracting Parties shall inform the other Contracting Party in writing through diplomatic channels of the implementation of their respective internal procedures that ensure the entry into force of this Agreement. The agreement shall come into force from the date of the last written notification.
2. This Agreement is concluded for a period of ten years and will be automatically extended for subsequent periods of five years if neither of the Contracting Parties notifies in writing to the other Contracting Party twelve months before the expiration of the relevant term of its intention to terminate this Agreement.
3. In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 12 shall remain in force for the next ten years from the date of termination of this Agreement.

Done in Ashgabat on January 29, 1998, in duplicate, in the Ukrainian, Turkmen and Russian languages, all texts being equally authentic. In case of divergence in the interpretation of the text of this Agreement, the text in Russian will be adopted as the basis.

For the Cabinet of Ministers of Turkmenistan

For the Government of Ukraine