

# **AGREEMENT BETWEEN THE GOVERNMENT OF UKRAINE AND THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ON RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

Agreement

Between the Government of Ukraine and the Government of the Islamic Republic of Iran on reciprocal promotion and protection of investments

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

Desiring to intensify economic cooperation to the mutual benefit of both States,

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

Recognizing that the promotion and reciprocal protection of investments under this Agreement, stimulates business initiatives in this area,

Agree as follows:

## **Article 1. Definition**

For the purposes of this Agreement:

1 The term "investment" will cover every 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 the laws and regulations of the latter and shall include, in particular

a Movable and immovable property as well as any other property rights such as mortgages, liens, pledges and similar rights

b Shares, stocks and debentures of companies or any other form of participation in a company

c The right to claims to money or any performance having an economic value associated with an investment

d The rights of industrial and intellectual property, including trademarks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill associated with an investment

e Any right conferred by law or under contract and any licenses and permits pursuant to law, including concessions to search for, extract, cultivate or exploit natural resources.

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 possessing the nationality of either Contracting Party in accordance with its laws

b The term "legal person" means any legal entity, established under the laws of one of the Contracting Parties and recognized as legal persons of the laws and carry real economic activity, along with the location of the territory of the Contracting Party.

3 The term "returns" means amounts received officially by an investment and in particular, though not exclusively, profits, capital gains, dividends, royalties and fees for services.

4 The term "territory" means:

A In respect of Ukraine:

Territory under the sovereignty of Ukraine, marine and underwater areas for which it carries out in accordance with international law, sovereignty, sovereign rights or jurisdiction

B With respect to the Islamic Republic of Iran:

The Islamic Republic of Iran, including coastal areas close to the coast on which it may exercise sovereign rights or jurisdiction.

## **Article 2. 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 constantly enjoy full legal protection and security in the territory of the other Contracting Party no less favorable than that granted to investors of any third country under similar conditions.

## **Article 3. Most Favored Nation**

1 Each Party shall provide in its territory to investments and returns of investors of the other Contracting Party, which is fair and equitable and not less favorable than that it accords to investments and returns of investors of any third State.

2 Each Party shall in its territory accord to investors of the other Contracting Party as regards management, maintenance, use, enjoyment or disposal of their investments treatment which is fair and equitable and not less favorable than that it accords to investors of any other 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 the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party resulting from

a Any customs union or free trade area or a monetary union or similar international agreements leading to such unions or investments, 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 4. Compensation for Losses**

1 When investments by investors of either Contracting Party suffer losses owing to war, armed conflict, a state of emergency, revolt, insurrection, riot or other similar events in the territory of the other Contracting Party, they shall be accorded by the latter Contracting Party as regards restitution, indemnification, compensation or other settlement treatment no less favorable than that which the latter Contracting Party shall accord to investments of its own investors or investors of any third State, depending on which one is more favorable.

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 another Contracting Party resulting from

A Requisitioning of their property by forces or authorities;

b Destruction of their property by forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded just and adequate compensation for the losses incurred during the period of requisitioning or as a result of destruction of property.

## **Article 5. Expropriation and Compensation**

1 Investments of investors of either Contracting Party shall not be nationalized, expropriated or directly or indirectly subjected to measures having equivalent effect other Contracting Party except for a public purpose, that are non-discriminatory and subject to payment of prompt, adequate and effective compensation accordance with the relevant legal requirements.

2 Compensation for expropriation of investments shall be equivalent to the value of the investment that existed

immediately before the expropriation was made or it became public knowledge.

Such compensation will include special compensation for the delay in payments from the date of expropriation.

3 The investor will have the right to prompt review by a judicial or other official authorities of the host Contracting Party of its case and evaluate its investment in accordance with the principles set out in this Article.

## **Article 6. Transfers**

1 The Contracting Parties shall guarantee the transfer of payments related to investments in freely convertible currency, without any restriction and undue delay in accordance with their respective laws and regulations.

Such transfers shall include, in particular

A Capital;

B Income;

C Funds in repayment of loans in connection with an investment;

D Proceeds from the sale or liquidation of investments;

e Salaries, wages and other payments received by a Contracting Party that received in the other Contracting Party related jobs (permissions) associated with an investment

E Compensation under Articles 4 and 5.

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

## **Article 7. Subrogation**

1 When investments by investors of one Contracting Party is insured against non-commercial risks in accordance with the system established by law, with respect to the insurance company of that Contracting Party, any subrogation of the insurer which arise in terms of the insurance contract will be recognized in another Contracting Party.

2 Such insurer will not have the power to implement any rights other than those which have investors.

3 Disputes between the Contracting Party and such an insurer will be adjusted in accordance with Article 8 of the Agreement.

## **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 the other Contracting Party shall 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 settled in this way within six months after the aforementioned negotiations, any party to a dispute shall have the right to submit the case to the international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations International Trade Law (UNCITRAL).

The parties to the dispute may agree in writing to modify these Rules.

The arbitration decision shall be final and binding on both parties to the dispute.

3 The Court shall be carried out by three arbitrators.

Each Party shall appoint one arbitrator and the two arbitrators shall elect a Chairman, who shall be a national of a third State which has diplomatic relations with both Contracting Parties at the time of election.

4 The decision of the Tribunal shall be final and binding on both parties to the dispute.

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

1 If a dispute arises between the Contracting Parties concerning the interpretation or application of this Agreement should, above all, to resort to solve it through consultation or negotiation.

2 If the Parties do not reach agreement within six months after written notice of either party to the dispute concerning the decision on negotiations, upon the request of either Contracting Party be submitted to an arbitral tribunal of three members in accordance with the provisions of this Article.

3 Each Contracting Party shall appoint one arbitrator and the two arbitrators shall elect a chairman, a national of a third State which has diplomatic relations with both Contracting Parties at the time of appointment.

4 A Contracting Party which took the initiative in arbitration, appoint its arbitrator in the lawsuit to arbitration.

If the other Contracting Party will offer its arbitrator within 30 days of receipt of the claim to arbitration, the arbitrator will be appointed at the request of the Contracting Party initiating the process of the President of the International Court of Justice.

5 If the two arbitrators can not reach an agreement within 60 days from the date of appointment of the second arbitrator on the choice of the presiding officer, the latter will be appointed at the request of either Contracting Party by the President of the International Court of Justice.

6 If in cases specified in paragraphs 4 and 5 of this Article, the President of the International Court of Justice for any reason prevent discharging the said function or if he is a national of either Contracting Party, the appointment will be made by Vice President of the International Court of Justice if the latter also can not perform the said function or is a national of either Contracting Party, the appointment will be made a senior member of the International Court of Justice who is not a citizen of either Contracting Party.

7 Provided that other provisions made by the Contracting Parties, the tribunal will determine its procedure and the place of arbitration.

8 The decision of the arbitral tribunal shall be final and binding on the Contracting Parties.

Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitration proceedings.

The cost of the Chairman and the remaining costs, shall be borne in equal parts by the Contracting Parties.

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

If the regulations of either Contracting Party or international agreements that exist at present or will come into force after the Contracting Parties in addition to this Agreement provided or to be provided rules generally or partially entitling investments by investors of the other Contracting Party, more favorable than that established by this Agreement, such rules to the extent that is more favorable, should prevail in relation to this Agreement.

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

1 The provisions of this Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party after the entry into force of this Agreement.

2 Contracting Parties may agree from time to time to the investments of investors of one Contracting Party in the territory of the other Contracting Party that occurred prior to the entry into force of this Agreement may also apply the provisions of this Agreement.

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

1 Each Party shall notify the other Contracting Party of the completion of the procedures required by its law for the entry into force of this Agreement.

This Agreement shall enter into force on the date of the second such notification.

2 This Agreement shall remain in force for ten years and shall continue in force until it loses power in accordance with paragraph 3 of this Article.

3 Any Contracting Party may by written notice one year before the expiry of the first ten years or any other period thereafter terminate this Agreement.

4 With respect to investments made or the rights to which were acquired prior to the date of termination of this Agreement, the provisions of all other articles of this Agreement shall apply for a period of ten years from the date of such termination.

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

Done at m.Teherani May 22, 1996, in two original copies, each in Ukrainian, Persian and English languages, all texts being equally authentic.

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

For the Government For the Government of Ukraine Islamic Republic of Iran

By signing the Agreement between the Government of Ukraine and the Government of the Islamic Republic of Iran on reciprocal promotion and protection of investments Parties also agreed on the following provisions, which shall be considered an integral part of the Agreement.

With a view to a clearer understanding of the terms "investment" and "tolerance" set out in Article 1.1 and Article 2.1, as well as in other Articles of Agreement, the Contracting Parties following positions

With respect to Ukraine, the term "investment", which is defined in Article 1.1 of the Agreement, as well as in other Articles of this Agreement, relating to all investments made by investors of the Islamic Republic of Iran on the territory of Ukraine in accordance with applicable laws and regulations in Ukraine.

Admission and registration of investments of investors of the Islamic Republic of Iran in Ukraine will be shown a document issued in accordance with applicable laws and regulations of Ukraine.

With respect to the Islamic Republic of Iran the term "investment" as defined in Article 1.1, as well as in other articles of the Agreement relates exclusively to investments admitted and registered on the territory of the Islamic Republic of Iran in accordance with the laws and regulations regarding involvement and Protection of Foreign Investment in Iran (LAPFI) or the laws and regulations that may apply LAPFI

Admission and Registration investments of investors of Ukraine on the territory of the Islamic Republic of Iran will be shown "Investment Certificate" which is a document recognized by the Ministry of Economic Affairs and Finance, Organization for Investment, and Economic and technical aid to Iran (O.I.E.T.A.I.) or its successor, meaning that investments were approved in accordance with the laws and regulations of the Islamic Republic of Iran concerning foreign investment.

The "Investment certificate" shall determine the appropriate detail the conditions under which the investment was made.

Done at m.Teherani May 22, 1996, in two copies, one Ukrainian, Persian and English languages, all texts being equally authentic.

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

For the Government For the Government of Ukraine Islamic Republic of Iran