

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of Soviet Socialist Republics (hereinafter referred to as the "Contracting Parties");

Desiring to create favourable conditions for greater investment by investors of one State in the territory of the other State;

Recognising that the promotion and reciprocal protection under international agreement of such investments will be conducive to the stimulation of business initiative and will contribute to the development of economic relations between the two States;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

(a) The term "investment" means every kind of asset and in particular, though not exclusively, includes:

- (i) Movable and immovable property and any other related property rights such as mortgages;
- (ii) Shares in, and stock, bonds and debentures of, and any other form of participation in, a company or business enterprise;
- (iii) Claims to money, and claims to performance under contract having a financial value;
- (iv) Intellectual property rights, technical processes, know-how and any other benefit or advantage attached to a business;
- (v) Rights, conferred by law or under contract, to undertake any commercial activity, including the search for, or the cultivation, extraction or exploitation of natural resources.

(b) A change in the form in which assets are invested does not affect their character as investments;

(c) The term "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees;

(d) The term "investor" shall comprise with regard to either Contracting Party:

- (i) Natural persons having the citizenship or nationality of that Contracting Party in accordance with its laws;
- (ii) Any corporations, companies, firms, enterprises, organisations and associations incorporated or constituted under the law in force in the territory of that Contracting Party;

Provided that that natural person, corporation, company, firm, enterprise, organisation or association is competent, in accordance with the laws of that Contracting Party, to make investments in the territory of the other Contracting Party;

(e) Subject to Article 11 of this Agreement the term "territory" means: Article 11 of this Agreement the term "territory" means:

- (i) In respect of the United Kingdom: the territory of Great Britain and Northern Ireland;
- (ii) In respect of the Union of Soviet Socialist Republics: the territories of all the Union Republics;

As well as those maritime areas adjacent to the outer limit of the territorial sea of any of the above territories, over which the State concerned exercises, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas.

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

(1) Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory, and, subject to its right to exercise powers conferred by its laws, shall admit such investments.

(2) Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into consistently with this Agreement with regard to investments of investors of the other Contracting Party.

## **Article 3. Treatment of Investments**

(1) Neither Contracting Party shall in its territory subject investments or returns of investors of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of investors of any third State.

(2) Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to investors of any third State.

(3) Each Contracting Party shall, to the extent possible, accord, in accordance with its laws and regulations, the same treatment, as mentioned in paragraphs (1) and (2) of this Article and in Article 4 of this Agreement, to the investments and returns of investors of the other Contracting Party as it accords to the investments and returns of its own investors.

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

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to any armed conflict, a state of national emergency or civil disturbances in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to investors of any third State. Resulting payments shall be made without delay and be freely transferable.

## **Article 5. Expropriation**

(1) Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a purpose which is in the public interest and is not discriminatory and against the payment, without delay, of adequate and effective compensation. Such compensation shall amount to the real value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall be made within two months of the date of expropriation, after which interest at a normal commercial rate shall accrue until the date of payment, and shall be effectively realizable and be freely transferable. The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

(2) Where a Contracting Party expropriates the assets of a company or enterprise which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party have a shareholding, the provisions of paragraph (1) of this Article shall apply.

## **Article 6. Repatriation of Investments and Returns**

(1) Each Contracting Party shall in respect of investments guarantee to investors of the other Contracting Party the unrestricted transfer to the country where they reside of their investments and returns, subject to the right of each Contracting Party in exceptional balance of payments difficulties and for a limited period to exercise equitably and in good

faith powers conferred by its laws. Such powers shall not however be used to impede the transfer of profit, interest, dividends, royalties or fees; as regards investments and any other form of return, transfer of a minimum of 20 per cent a year is guaranteed.

(2) Transfers under paragraph (1) of this Article shall be effected without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the investor and the Contracting Party concerned. Unless otherwise agreed by the investor with the Contracting Party concerned transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force of the Contracting Party in whose territory the investment was made.

## **Article 7. Exceptions**

The provisions of Articles 3 and 4 of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from

(a) Any existing or future customs union, organisation for mutual economic assistance or similar international agreement, whether multilateral or bilateral, to which either of the Contracting Parties is or may become a party, or

(b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

## **Article 8. Disputes between an Investor and the Host Contracting Party**

(1) This Article shall apply to any legal disputes between an investor of one Contracting Party and the other Contracting Party in relation to an investment of the former either concerning the amount or payment of compensation under Articles 4 or 5 of this Agreement, or concerning any other matter consequential upon an act of expropriation in accordance with Article 5 of this Agreement, or concerning the consequences of the non-implementation, or of the incorrect implementation, of Article 6 of this Agreement. Articles 4 or 5 of this Agreement, or concerning any other matter consequential upon an act of expropriation in accordance with Article 5 of this Agreement, or concerning the consequences of the non-implementation, or of the incorrect implementation, of Article 6 of this Agreement.

(2) Any such disputes which have not been amicably settled shall, after a period of three months from written notification of a claim, be submitted to international arbitration if either party to the dispute so wishes.

(3) Where the dispute is referred to international arbitration, the investor concerned in the dispute shall have the right to refer the dispute either to:

(a) The Institute of Arbitration of the Chamber of Commerce of Stockholm; or

(b) An international arbitrator or ad hoc arbitration tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law; the arbitration shall be conducted under these Rules, unless the parties to the dispute agree in writing to modify them. ad hoc arbitration tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law; the arbitration shall be conducted under these Rules, unless the parties to the dispute agree in writing to modify them.

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

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through the diplomatic channel.

(2) If a dispute between the Contracting Parties cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

(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 International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented

from discharging the said function, the Vice-President of the International Court of Justice shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

## **Article 10. Subrogation**

(1) If one Contracting Party or its designated Agency makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party or its designated Agency by law or by legal transaction of all the rights and claims of the party indemnified and that the former Contracting Party or its designated Agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified, except any rights available to the investor by virtue of Article 8 of this Agreement. Article 8 of this Agreement.

(2) The former Contracting Party or its designated Agency shall be entitled in all circumstances to the same treatment in respect of the rights and claims acquired by it by virtue of the assignment and any payments received in pursuance of those rights and claims as the party indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

(3) Any payments received by the former Contracting Party or its designated Agency in pursuance of the rights and claims acquired shall be freely available to the former Contracting Party for the purpose of meeting any expenditure incurred in the territory of the latter Contracting Party.

## **Article 11. Amendment to Territorial Provisions**

At the time of entry into force of this Agreement, or at any time thereafter, the provisions of Article 1(e) of this Agreement may be amended in such manner as may be agreed between the Contracting Parties in an exchange of notes.

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

This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled before its entry into force.

## **Article 13. Entry Into Force**

Each Contracting Party shall notify the other in writing of the completion of the constitutional formalities required for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of the two notifications.

## **Article 14. Duration and Termination**

This Agreement shall remain in force for a period of fifteen years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other. Provided that in respect of investments made at any time before the termination of the Agreement, its provisions shall continue in effect with respect to such investments for a period of fifteen years after the date of termination and without prejudice to the application thereafter of the general rules of international law.

Done in duplicate at London this 6th day of April 1989 in the English and Russian languages, both texts being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland: [Signed] Geoffrey Howe

For the Government of the Union of the Soviet Socialist Republics: [Signed]E. SHEVARDNADZE