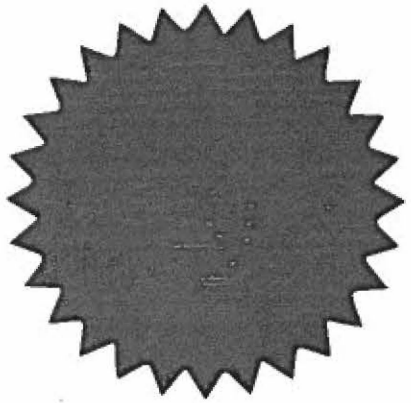
AGREEMENT
BETWEEN
THE GOVERNMETN OF THE STATE OF ISRAEL
AND
THE GOVERNMENT OF UKRAINE
FOR
THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS



The Government of the State of Israel and the Government of Ukraine (hereinafter: the "Contracting Parties"),

DESIRING to intensify economic cooperation to the mutual benefit of both countries,

INTENDING to create favourable conditions for greater investments by investors of either Contracting Party in the territory of the other Contracting Party; and

RECOGNIZING that the reciprocal promotion and protection of investments on the basis of the present Agreement will be conductive to the stimulation of individual business initiative and will increase prosperity in both States,

HAVE AGREED as follows:

ARTICLE 1
Definitions

1. For the purposes of the present Agreement:

(a) "Investments" shall mean any kind of assets, implemented in accordance with the legislation of the Contracting Party in whose territory the investment is made including, but not limited to:

1. movable and immovable property as well as any related rights;
2. rights derived from stocks, securities, debentures of legal entities, or from any other form of participating and activity in a legal entity;
3. claims to money, goodwill and other assets and any claim having an economic value;
4. intellectual property rights, including, inter alia, patents, trade marks, geographical indications, industrial prototypes, technical processes, copyrights and related rights, trade secrets and now-how, topographies of the integrated circuits and plant-breeders rights;
5. business concessions conferred by legislation or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

(b) "Host Contracting Party" shall mean the Contracting Party in whose territory the investment is made, and the term "Home Contracting Party" shall mean, in relation to that investment, the other Contracting Party.

(c) "Returns" shall mean the amount yielded by an investment including, but not limited to: dividends, profits, sums received from the total or partial liquidation of an investment, interest, capital gains or royalties.

(d) "Investor" shall mean:

(1) (i) with respect to the State of Israel: a natural person who is a national or

permanent resident of the State of Israel who is not also a national or permanent resident of Ukraine;

(ii) with respect to Ukraine: a natural person who is a national or permanent resident of Ukraine who is not also a national or permanent resident of the State of Israel;

(2) a legal entity

(i) that was incorporated, constituted or otherwise duly organized under the legislation of the Home Contracting Party; or

(ii) that is controlled, directly or indirectly, by persons who are nationals or permanent residents of the Home Contracting Party, and it fulfills one of the following conditions:

(A) its registered office, center of management, or practical management is located in the territory of either Contracting Party;

(B) a substantial part of its economic activity is located in the territory of either Contracting Party;

(e) "Legal entity" shall mean any organization including a corporation, a firm, an association or a partnership.

(f) "Territory" of a Contracting Party shall mean:

1) With respect to the State of Israel: the territory of the State of Israel including the territorial sea, as well as the continental shelf and the exclusive economic zone over which the State of Israel exercises sovereign rights or jurisdiction in conformity with international law.

2) With respect to Ukraine: the territory of Ukraine including the territorial sea, as well as the continental shelf and the exclusive economic zone over which Ukraine exercises sovereign rights or jurisdiction in conformity with international law.

(g) "Freely usable currency" shall mean any currency that the International Monetary Fund determines, from time to time, as a freely usable currency in accordance with the Articles of the Agreement of the International Monetary Fund.

(h) "Legislation" of a Contracting Party shall mean the laws and regulations of the State of the Contracting Party.

2. The provisions of this Agreement relating to investments shall apply to the reinvestment of the returns of an investment, which shall be granted the same treatment granted to the original investment, if the reinvestment is effected in accordance with the legislation of the Host Contracting Party. A change in the form of the investment or a change in the form of the reinvestment shall not affect their character as investments within the meaning of this Agreement if the change is effected in accordance with the legislation of the Host Contracting Party.

3. For the sake of further clarification, this Agreement does not apply to the transactions of granting or receiving by investors of each Contracting Party any credits, loans and returnable financial aid.

ARTICLE 2

Promotion and Protection of Investments

1. Each Contracting Party shall, in its territory, encourage and create favourable conditions for investments by investors of the other Contracting Party and, subject to its legislation, shall admit such investments.

2. Investments made by investors of each Contracting Party shall be accorded fair and equitable treatment in accordance with the provisions of this Agreement, 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 measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

ARTICLE 3

Most Favoured Nation and National Treatment

1. Neither Contracting Party shall, in its territory, subject investments or returns of investments of investors of the other Contracting Party, to treatment less favourable than that which it accords to investments or returns of investments of an investor of any third state or, subject to the legislation of the Contracting Party, to treatment less favourable than that which it accords to investments or returns of investments of its own investors.

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 in like circumstances to investors of any third state or, subject to the legislation of the Contracting Party, than that which it accords to its own investors.

ARTICLE 4

Compensation for Losses

1. Investors of the Home Contracting Party whose investments in the territory of the Host Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riot or other such similar activity in the territory of the Host Contracting Party, shall be accorded by the Host Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the Host Contracting Party accords to its own investors or to investors of any third state. Payments in accordance with this Article shall be freely transferable.

2. Without prejudice to paragraph 1 of this Article, investors of the Home Contracting Party who suffer losses in the territory of the Host Contracting Party, resulting from:

(a) requisitioning of their property by the State authorities of the Host Contracting Party;

(b) destruction of their property by the State authorities of the Host Contracting Party, which was not caused in combat action or was not required by the necessity of the situation,

shall be accorded restitution or adequate compensation. Payments in accordance with this Article shall be freely transferable.

ARTICLE 5
Expropriation

1. Investments of investors of the Home Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter: "expropriation") in the territory of the Host Contracting Party, except for a public purpose related to the internal needs of the Host Contracting Party, and in accordance with the following terms:

(a) The expropriation shall be made in accordance with the laws of the Host Contracting Party, on a non-discriminatory basis and against prompt, adequate and effective compensation not less favourable than that accorded to the investors of the Host Contracting Party. Payments in accordance with this Article shall be freely transferable.

(b) Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at the applicable rate provided by law of that Contracting Party until the date of payment, shall be made without delay, be effectively realizable and be freely transferable.

(c) The investors 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 the State of that Contracting Party, of the legality of the expropriation and of the valuation of their investment, in accordance with the principles set out in this Article.

2. Notwithstanding the forgoing, with respect to intellectual property rights, the Contracting Parties may permit the unauthorized use of an intellectual property right, provided such authorization is made in conformance with the principles set forth in the Agreement of Trade Related Aspects of Intellectual Property Rights ("TRIPS") (1994).

ARTICLE 6
Transfer of Investments and Returns

1. Each Contracting Party shall, in respect of investments, guarantee to investors of the other Contracting Party the rights of unrestricted transfer of their investments and returns in accordance with the following terms:

(i) Transfers shall be effected without delay in the freely usable currency in which the capital was originally invested or in any other freely usable currency chosen by the investor provided that the investor has complied with all his fiscal and other financial obligations as well as relevant procedural requirements of the Host Contracting Party.

(ii) Unless otherwise agreed by the investor, transfers shall be made at the rate of exchange applicable transfer pursuant to the exchange regulations in force in the Host Contacting Party.

(iii) In any case, transfers shall be in terms not less favourable than that accorded by the Host Contracting Party to its own investors.

2. Notwithstanding the forgoing:

(i) When a Contracting Party is in serious balance of payments difficulties or in serious difficulties for the operation of the exchange rate policy or monetary policy, or under threat thereof, that Contracting Party may, in conformity with the conditions laid down within the framework of the GATT and with Articles VIII and XIV of the Articles of Agreement of the International Monetary Fund, adopt restrictive measures which may not go beyond what is necessary to remedy the situation, for a period not exceeding six months. Herewith the Contracting Party shall notify the other Contracting Party, as soon as possible, as to the measures taken, and the expected timetable for their removal.

(ii) Such measures shall be equitable, non-discriminatory, and in good faith.

ARTICLE 7
Exceptions

1. Either Contracting Party may take measures strictly necessary for the maintenance or protection of its essential security interests. Such measures shall be taken and implemented in good faith, in a non-discriminatory fashion and so as to minimize the deviation from the provisions of this Agreement.

2. The provisions of this Agreement relative to the granting of treatment not less favourable than that accorded to the investors of either Contracting Party or of any third state 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:

(i) any international agreement including any arrangements relating wholly or mainly to taxation, or any domestic legislation relating wholly or mainly to taxation;

(ii) any existing or future customs union, free trade area agreement or similar international agreement, to which either State of the Contracting Parties is or will be Party, within the meaning of "customs union" or "free trade agreement" in accordance with Article XXIV of the GATT Agreement;

(iii) any existing or future international agreement concerning intellectual property;

(iv) any agreement for the Reciprocal Promotion and Protection of Investments concluded between either Party and a third state, that was signed before 1st of July, 2003.

ARTICLE 8
Settlement of Investment Disputes between a Contracting Party and Investor

1. Any investment dispute between a Contracting Party and an investor of the other Contracting Party shall be settled by negotiations.

2. If a dispute under paragraph 1 of this Article cannot be settled within six (6) months since the moment of receipt by a Contracting Party of a written notification of this dispute, it shall be on the request of the investor settled as follows:

(a) by a competent court of the Host Contracting Party; or

(b) by conciliation; or

(c) by arbitration by the International Center for the Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington, D.C. on march 18, 1965, provided that both Contracting Parties are Parties to the Convention; or

(d) by arbitration under the Additional Facility Rules of ICSID, provided that only one of the Contracting Parties is a Party to the ICSID Convention; or

3. Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration in accordance with the provisions of this Article. This consent and the submission by a disputing investor of a claim to arbitration shall satisfy the requirements of:

(a) Chapter II of the ICSID Convention or the Additional Facility Rules of ICSID for written consent of the parties;

(b) Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 ("The New York Convention"), for an agreement in writing.

4. Unless otherwise agreed, an investor who has submitted the dispute to national jurisdiction may have recourse to the arbitral tribunals mentioned in paragraph 2 of this Article so long as a judgment has not been delivered on the subject matter of the dispute by a national court. For the Sake of clarification, the right of an investor under this paragraph shall apply provided that the investor discontinues the proceedings on the subject matter before the national court.

5. The award shall be final and binding. Each Contracting Party shall carry out without delay the provisions of any such award and provide in its territory for the enforcement of such award.

ARTICLE 9
Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement, should be settled through the diplomatic channel, which may include, if both Contracting Parties so desire, referral to a Bilateral Commission composed of representatives of both Contracting Parties or to conciliation.

2. If a dispute according to paragraph 1 of this Article cannot be settled within six (6) months from notification of this dispute it may, upon the request of either Contracting Party, be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each case in the following way: within two (2) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. The two arbitrators shall then select a national of a third state on approval of the two Contracting Parties, and this person shall be Chairman of the tribunal. The Chairman shall be appointed within two (2) 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 Secretary General of the Permanent Court of Arbitration at the Hague (hereinafter: the "PCA") to make any necessary appointments. If the Secretary General of the PCA is a national of the state of either Contracting Party or is otherwise prevented from discharging the said function, then the Deputy Secretary General of the PCA who is not a national of the state of either Contracting Party shall be invited to make the necessary appointments.

5. Unless otherwise agreed, the arbitration shall be conducted in accordance with the UNCITRAL arbitration rules. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within six (6) months of the date of selection of the Chairman, and the arbitral panel shall render its written and reasoned decisions within two (2) months of the date of the final submissions or the date of the closing of the hearings, whichever is later.

6. The arbitral tribunal shall reach its decision by a majority vote. Such decision shall be binding on both Contracting Parties.

7. 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.

ARTICLE 10
Insurance and Guarantee

In any proceeding involving an investment dispute, a Contracting Party shall not assert, as a defence, counterclaim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to an insurance or guarantee contract.

ARTICLE 11
Subrogation

1. If a Home Contracting Party or its designated Agency makes a payment under an indemnity given in respect of an investment in the territory of the Host Contracting Party, the Host Contracting Party shall recognize:

(a) the assignment to the Home Contracting Party or its designated Agency by legislation or by legal transaction of all the rights and claims of the investor indemnified; and

(b) that the Home 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 rights and claims of the investor indemnified, and shall assume the obligations related to the investment.

2. The Home Contracting Party or its designated agency shall be entitled in all circumstances to:

(a) the same treatment in respect of rights, claims and obligations acquired by it, by virtue of the assignment; and

(b) any payments received in pursuance of those rights and claims, as the investor indemnified was entitled to receive by virtue of this Agreement, in respect of the investment concerned and its related returns.

ARTICLE 12
Application of other rules

If the provisions of legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investors or investments of investors of one Contracting Party to a treatment more favourable than is provided for by this Agreement, such rules shall, to the extent that they are more favourable, prevail over the present Agreement.

ARTICLE 13
Application of the Agreement

The provisions of this Agreement shall apply to investments made upon or before the entry into force of this Agreement, but shall not apply to an investment subject to a dispute which has arisen before the entry into force of this Agreement.

ARTICLE 14
Amendment of the Agreement

Changes and amendments to this Agreement shall be made by mutual written consent of the Contracting Parties and be formed in Protocols, which constitute its integral part and shall enter into force in accordance with Article 16 of this Agreement.

ARTICLE 15
Relation to the previous Agreement

1. Upon its entry into force, this Agreement shall replace the Agreement between the Government of Ukraine and the Government of the State of Israel for the Reciprocal Promotion and Protection of Investments, signed in Kyiv on 16 June 1994.

2. Notwithstanding sub-paragraph 1 of this Article, the Agreement between the Government of Ukraine and the Government of the State of Israel for the Reciprocal Promotion and Protection of Investments, signed in Kyiv on 16 June 1994 shall continue to apply for an additional period of one year from the date of entry into force of the present Agreement, with respect to investments made before the date of entry into force of the present Agreement. After this transitional period of one year the former Agreement shall terminate and the present Agreement shall apply to all investments, subject to Article 13 of this Agreement.

ARTICLE 16
Entry into force, Duration and Termination

1. Each of the Contracting Parties shall notify the other in writing, through the diplomatic channels, on the completion of their internal legal procedures necessary for the entry of this Agreement into force.

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

2. This Agreement shall remain in force for a period of ten (10) years. Thereafter it shall be automatically prolonged and remain in force until the expiration of twelve (12) months from the date on which either Contracting Party shall have given to the other, through the diplomatic channels, written notice of termination.

3. In respect of investments made while this Agreement is in force, its provisions shall continue to be in effect with respect to such investments for a period of ten (10) years after the date of termination and without prejudice to the application thereafter of the rules of international law.

In witness whereof the undersigned, duly authorized thereto by their respective Governments, have signed this agreement.

Done in Kyiv this 24 day of November 2010 which corresponds to the 17 day of Kislev 5771, in duplicate in the Hebrew, Ukrainian and English languages, all texts being equally authentic. In case of differences in interpretation the English text shall prevail.

For the Government of the State of Israel

For the Government of Ukraine