

AGREEMENT**BETWEEN THE GOVERNMENT OF UKRAINE AND THE GOVERNMENT OF THE ITALIAN REPUBLIC ON THE PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of Ukraine and the Government of the Italian Republic , hereinafter referred to as the Contracting Parties,

desiring to establish favourable conditions for improved economic cooperation between the two Countries, and especially in relation to capital investments by investors of one Contracting Party in the territory of the other Contracting Party,

and

acknowledging that offering encouragement and mutual protection to such investments, based on international Agreements, will contribute to stimulating business ventures, which foster the prosperity of both States,

have agreed as follows:

Article 1 - Definitions

For the purposes of this Agreement:

1. The term "investment" shall mean any kind of property invested, before or after the entry into force of this Agreement, by a natural or legal person of a Contracting Party in the territory of the other Contracting Party, provided that the investment has been made in accordance with laws and regulations of the latter Contracting Party and shall include in particular, but not exclusively:

- a) movable and immovable property as well as any other property rights and right "in rem" such as pledges, liens and mortgages;
- b) shares, debentures, equity holdings or any other form of participation in a company and any other instruments of credit, as well as Government securities;
- c) claims to money or any performance having an economic value connected with an investment, as well as reinvested incomes and capital gains;
- d) copyright, commercial trade marks, patents, industrial designs and other intellectual and industrial property rights, know-how, trade secrets, trade names and goodwill;
- e) any economic rights accruing by law or by contract and any licence and concession granted in accordance with the provisions in force on economic activities, including the

right to prospect for, extract and exploit natural resources;

- f) any increase in value of the original investment.

Any modification in the form of the investment does not imply a change in the nature thereof.

2. The term "investor" shall mean any natural or legal person of a Contracting Party investing, directly or through its own subsidiaries, in the territory of the other Contracting Party.
3. The term "natural person", in reference to either Contracting Party, shall mean any natural person holding the nationality of that State in accordance with its laws.
4. The term "legal person", in reference to either Contracting Party, shall mean any entity which is constituted or otherwise duly organized under the law of one of the Contracting Parties, having its head office in the territory of one of the Contracting Parties and recognised by it.
5. The term "income" shall mean the amounts yielded by an investment and in particular, though not exclusively, includes profits, interests, capital gains, dividends, royalties, fees and any other form of payments both in money and in kind.

6. The term "territory" shall mean, in addition to the zones contained within the land boundaries, the "maritime zones". The latter also comprise the marine and submarine zones over which the Contracting Parties exercise sovereignty, and sovereign or jurisdictional rights, under international law.
7. "Investment agreement" shall mean an agreement between a Contracting Party (or its agencies or instrumentalities) and an investor of the other Contracting Party concerning an investment.
8. "Right of access" shall mean the right of the investor of a Contracting Party to be admitted to carry out investments in the territory of the other Contracting Party.

Article 2 - Promotion and Protection of Investments

1. Both Contracting Parties shall encourage investors of the other Contracting Party to invest in their territory according to their laws and regulations.
2. Investors of one of the Contracting Parties shall have the right of access to the investment activities, in the territory of the other Contracting Party, in accordance

with the legislation of the latter Contracting Party, not less favourable than the one granted as per Article 3.1.

3. Both Contracting Parties shall at all times ensure just and fair treatment of the investments of investors of the other Contracting Party. Both Contracting Parties shall ensure that the management, maintenance, use, transformation, enjoyment or assignment of the investments effected in their territory by investors of the other Contracting Party, as well as the legal persons, in particular but not exclusively, companies and enterprises, in which these investments have been effected, shall in no way be subject to unjustified or discriminatory measures.

4. Each Contracting Party shall create and maintain in its territory favourable economic and legal conditions in order to permit investments of investors of the other Contracting Party in accordance with its legislation, including the compliance, in good faith, of all undertakings assumed with regard to each specific investor.

Article 3 - National Treatment and the Most Favoured Nation Clause

1. Both Contracting Parties, within the bounds of their own territory, shall offer investments effected by, and the income accruing to, investors of the other Contracting Party no less favourable treatment than that accorded to investments effected by, and income accruing to, its own investors or investors of Third States.

2. If international obligations in force or that may come into force in the future for one of the Contracting Parties, contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than the one provided for by the present Agreement, such rules will, to the extent that they are more favourable, prevail over the present Agreement.

3. The provisions under point 1 and 2 of this Article do not refer to the advantages and privileges which one Contracting Party may grant to investors of Third States by virtue of its membership of a Customs or Economic Union, of a Common Market, of a Free Trade Area, of a regional or subregional Agreement, of an international multilateral economic Agreement or under Agreements stipulated in order to prevent double taxation or to **facilitate cross-border trade.**

Article 4 - Compensation for Damages or Losses

Should investors of one of the Contracting Parties incur losses or damages on their investments in the territory of the other Contracting Party due to war, other forms of armed conflict, a state of emergency, civil strife or other similar events, the Contracting Party in which the investment has been effected shall offer adequate compensation in respect of such losses or damages, whether or not such losses or damages have been caused by governmental forces. Compensation payments shall be freely transferable without undue delay.

The investors concerned shall receive the same treatment as the nationals of the other Contracting Party and, at all events, no less favourable than the one accorded to investors of Third States.

Article 5 - Expropriation

1. Investments of investors of either Contracting Party shall not be, "de jure" or "de facto", expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred as "expropriation") in the territory of the other Contracting Party except for a public purpose and national interest.

The expropriation shall be carried out under due process of law, on a non-discriminatory basis and in exchange of

the payment of prompt, adequate and effective compensation.

Such compensation shall be equivalent to the market value of the investment expropriated immediately prior to the moment in which the decision of expropriation has been announced.

The exchange rate applicable to any such compensation shall be that prevailing on the date immediately prior to the moment in which the decision of expropriation has been announced.

The compensation shall include interest calculated on the LIBOR basis from the date of expropriation to the date of payment, shall be made without delay and in any case within three months, shall be effectively realizable and shall be freely transferable in convertible currency.

2. In the absence of an understanding between the host Contracting Party and the investor concerning the amount of the compensation, the latter shall be based on the same reference parameters taken into account in the documents for the constitution of the investment.
3. The provisions of this Article shall also apply when a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in its territory and of which investors of the other Contracting Party own shares.

In case that the object of expropriation is a legal person jointly created by Ukrainian and Italian

investors, the evaluation of the share of the investor will be, in the currency of the investment, not lower than the starting value, increased by capital increases and revaluation of capital, undistributed profits and reserve funds, and diminished by the value of capital reductions and losses.

4. An investor of either Contracting Party that asserts that all or part of its investment has been affected by expropriation shall have the right to a prompt review by the competent judicial or administrative authorities of the other Contracting Party in order to determine whether such measure has occurred and, if it has, whether such measure and any compensation thereof conform to the provisions of this Agreement and to the principles of international law, and in order to decide all other relevant matters.
5. Compensation will be considered as actual if it has had been paid in the same currency in which the investment has been made by the foreign investor, in so far as such currency is - or remains - convertible, or, otherwise, in any other currency accepted by the investor. Compensation will be freely transferable.
6. The provisions of this Article shall also apply to profits accruing to an investment and, in the event of winding-up, the proceeds of liquidation.

7. If, after the dispossession, as a consequence of expropriation, the assets concerned have not been utilized, wholly or partially, for that purpose, the owner or his assignees are entitled to the repurchasing of the assets at market price.

Article 6 - Repatriation of Capital, Profits and Income related to an Investment

1. Each of the Contracting Parties shall guarantee that the investors of the other Contracting Party may transfer abroad amounts related to investments, without undue delay, in any convertible currency. Such transfers shall include in particular though not exclusively:
 - a) capital and additional capital, including reinvested income, used to maintain and increase an investment;
 - b) net income, dividends, royalties, fees, interests and other profits;
 - c) income deriving from the total or partial sale or the total or partial liquidation of an investment;
 - d) remuneration and allowances paid to nationals of the other Contracting Party for work and services performed in relation to an investment effected in the territory of the other Contracting Party, in the amount and manner

prescribed by the national legislation and regulations in force.

2. Each of the Contracting Parties shall grant the investors of the other Contracting Party the conditions for transferring abroad, without undue delay, in any convertible currency, funds to repay loans connected to an investment and the payment of the related interests.

3. Without restricting the scope of Article 3 of this Agreement, the Contracting Parties undertake to apply to the transfers mentioned in paragraph 1 of this Article the same favourable treatment accorded to investments effected by investors of Third States, in case it is more favourable.

Article 7 - Subrogation

In the event that one Contracting Party or its Institution thereof has provided a guarantee in respect of non-commercial risks for the investment effected by one of its investors in the territory of the other Contracting Party, and has effected payment to said investor on the basis of that guarantee, the other Contracting Party shall recognize the assignment of the rights of the investor to the first-named Contracting Party or its Institution thereof.

Article 8 - Transfer Procedures

1. The transfers referred to in Article 4, 5, 6 and 7 shall be effected without undue delay and, at all events, within six months after all fiscal obligations have been met, and shall be made in a convertible currency. All the transfers shall be made at the prevailing exchange rate applicable on the date on which the investor applies for the related transfer, with the exception of the provisions under paragraph 3 of Article 5 concerning the exchange rate applicable in case of one of the measures referred to in paragraph 2 of Article 5.
2. The fiscal obligations under the previous paragraph are deemed to be complied with when the investor has fulfilled the proceedings provided for by the law of the Contracting Party on the territory of which the investment has been carried out.

Article 9 - Settlement of Disputes between Investors and Contracting Parties

1. Any dispute which may arise between one of the Contracting Parties and the investors of the other Contracting Party on investments, including disputes relating to the amount of compensation, shall be settled amicably, as far as possible.