

**AGREEMENT
BETWEEN THE GOVERNMENT OF UKRAINE
AND THE GOVERNMENT OF YEMEN
FOR THE PROMOTION
AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of Ukraine and the Government of Yemen (hereafter referred to as the "Contracting Parties").

Desiring to intensify economic co-operation to the mutual benefit of both States,

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

Conscious that the promotion and reciprocal protection of investment, according to the present Agreement, stimulates the business initiatives in this field,

Have agreed as follows:

**ARTICLE 1
DEFINITIONS**

For the purposes of these Agreements:

1. The term "investment" shall comprise 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 in accordance with the laws and regulations of the latter and shall include, in particular, though not exclusively:

/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/ claims to money or to any performance having an economic value associated with an investment;

/d/ intellectual property rights, including copyrights, trade marks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill associated with an investment;

/e/ concession under public law, as well as other rights given by law, by contract or by decision of the authority, in accordance with the national law of the Contracting Party host of the investment.

Any alternation of the form in which assets are invested shall not affect their character as an investment.

2. The term "Investor" shall mean any natural or legal person who invests in the territory of the other Contracting Party.

/a/ The term "natural person" shall mean any natural person having the

nationality of either Contracting Party in accordance with its laws;

/b/ The term "legal person" shall mean any organization incorporated or constituted or, otherwise, duly organized under the law of that Contracting Party, including companies, associations, partnerships, corporations, branches etc.

3. The term "returns" shall mean amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, shares, dividends, royalties or fees.

4. The term "territory" shall mean, territory of each contracting parties which comes under its sovereignty including in addition to the zones contained within the land boundaries, the islands and territorial sea and exclusive economic zone, and also the continental shelf and other maritime areas over which it has sovereignty and jurisdiction according to international law.

ARTICLE 2

PROMOTION AND PROTECTION OF INVESTMENTS

1. Each Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

2. Investments of investors of either Contracting Party shall at all times enjoy full protection and security in the territory of the other Contracting Party.

ARTICLE 3

MOST-FAVOURLED-NATION TREATMENT

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

2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investment, treatment which is fair and equitable and not less favorable than that which it accords to investors of any third State.

3. The provisions of paragraph 1 and 2 of this Article shall not be construed so as to oblige Contracting Party to extend to the investors of the other benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of;

/a/ any customs union or free trade area or a monetary union or similar international agreements leading to such unions or institutions or other forms of regional co-operation to which either of the 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 national 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 treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

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 public purpose. The expropriation shall be carried out under due process of law, on a non-discriminatory basis and shall be accompanied by provisions for the payment of prompt, adequate and effective compensation. All or part of project real estate may not be expropriated save for the publicweal according to the law and a court judgement and against fair compensation on the basis of such market price of such real estate on the issuance date of court judgement, but not later than three months from such date. In the event of delay in payment beyond this period, compensation shall be revalued on the basis of the then prevailing market price. In case where the invested funds, subject of such action are foreign funds, such compensations may be freely transferred abroad regardless of any law or decree providing otherwise.

2. The investor affected shall have a right, to prompt renew, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.

3. The provisions of paragraph 1 of this Article shall also apply where a Contracting Party expropriates the assets of a company 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 own shares.

ARTICLE 6
TRANSFERS

1. The Contracting Parties shall guarantee the transfer of payments related to investments and returns. The transfers shall be made in a freely convertible currency, without any restriction and undue delay. Such transfers shall include in particular, though not exclusively:

/a/ capital and additional amounts to maintain or increase the; investment;
/b/ profits, interest, dividends and other current income;
/c/ funds in repayment of loans;
/d/ royalties or fees;
/e/ proceeds of sale or liquidation of the investment;
/f/ the earnings of natural persons subject to the laws and regulations of the Contracting Party, in which investments have been made.

2. For the purpose 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. If a Contracting Party or its designated agency makes payment to its own investors under a guarantee it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

/a/ the assignment, whether under the law or pursuant to a legal transaction in that country, of any right or claim by the investor to the former Contracting Party or its designated agency, as well as,

/b/ that the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and shall assume the obligations related to the investment.

2. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

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 on the territory of that other Contracting Party shall be subject to negotiations between the parties in dispute.

2. If any dispute between an investor of one Contracting Party and the other Contracting Party can not be thus settled within a period of six months, the investor shall be entitled to submit the case either to:

/a/ The International Centre for Settlement of Investment Disputes (ICSID) having regard to the applicable provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington D.C. on 18 March 1965, in the event both Contracting Parties shall have become a party to this Convention; or

/b/ an arbitrator or international ad hoc arbitral tribunal established under the

Arbitration Rules of the United Nations Commission of International Trade Law (UNCITRAL), The parties to the dispute may agree in writing to modify these Rules. The arbitral awards shall be final and binding on both Parties to the dispute.

ARTICLE 9

SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES

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

2. If the dispute cannot be thus settled within six months, it shall upon the request of either Contracting Party, be submitted to an Arbitral Tribunal in accordance with the provisions of this Article.

3. The 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. These two members shall then select a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal (hereinafter referred to as the "Chairman"). The Chairman shall be appointed within three months from the date of last 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, a request may be made to the President of the International Court of Justice to make the appointments. If he happens to be a national of either Contracting Party, or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointments. If the Vice-President also happens to be a national of either Contracting Party or 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 appointments.

5. The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties, The Arbitral Tribunal shall determine its own procedure.

ARTICLE 10

APPLICATION OF OTHER RULES AND SPECIAL COMMITMENTS

1. Where a matter is governed simultaneously both by this Agreement and by another international agreement to which both Contracting Parties are parties, nothing in this Agreement shall prevent either Contracting Party or any of its investors who own investments in the territory of the other Contracting Party from taking advantage of

whichever rules are more favourable to his case.

2. If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party in accordance with its laws and regulations or other specific provisions of contracts is more favourable than that accorded by the Agreement, the more favourable shall be accorded.

**ARTICLE 11
APPLICABILITY OF THIS AGREEMENT**

The provisions of this Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party prior as well as after the entry into force of this Agreement, But they shall not be applied to disputes arising before the entry into force of this Agreement.

**ARTICLE 12
ENTRY INTO FORCE, DURATION AND TERMINATION**

1. Each of the Contracting Parties shall notify the other of the completion of the procedures required by its law for bringing this Agreement into force. This Agreement shall enter into force on the date of the second notification.

2. This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, one year before the expire of the initial or any subsequent periods, either Contracting Party notifies the other in writing of its intention to terminate the Agreement.

3. In respect of investments made prior to the termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten years from the date those investments were established.

IN WITNESS WHEREOF, the undersigned duly authorised have signed this Agreement.

DONE in duplicate at *St yew*, this *19* day of *February* 2001 in Ukrainian, Arabic and English languages, both texts being equally authentic.

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

FOR THE GOVERNMENT

OF UKRAINE



FOR THE GOVERNMENT

OF YEMEN

