

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

**THE GOVERNMENT OF UKRAINE AND THE GOVERNMENT OF  
CANADA, hereinafter referred to as the "Contracting Parties",**

**Recognizing** that the promotion and the protection of investments of investors of one Contracting Party in the territory of the other Contracting Party will be conducive to the stimulation of business initiative and to the development of economic cooperation between them,

**Have agreed as follows:**

**ARTICLE I**

Definitions

For the purpose of this Agreement:

- (a) "enterprise" means
  - (i) any entity constituted or organized under applicable law, whether or not for profit, whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association; and
  - (ii) a branch of any such entity;
- (b) "existing measure" means a measure existing at the time this Agreement enters into force;
- (c) "financial service" means a service of a financial nature, including insurance, and a service incidental or auxiliary to a service of a financial nature;
- (d) "financial institution" means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Contracting Party in whose territory it is located;
- (e) "intellectual property rights" means copyright and related rights, trademark rights, patent rights, rights in layout designs of semiconductor integrated circuits, trade secret rights, plant breeders' rights, rights in geographical indications and industrial design rights;
- (f) "investment" means any kind of asset owned or controlled either directly, or indirectly through an investor of a third State, by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's laws and, in particular, though not exclusively, includes:

- (i) movable and immovable property and any related property rights, such as mortgages, liens or pledges;
- (ii) shares, stock, bonds and debentures or any other form of participation in a company, business enterprise or joint venture;
- (iii) money, claims to money, and claims to performance under contract having a financial value;
- (iv) goodwill;
- (v) intellectual property rights;
- (vi) rights, conferred by law or under contract, to undertake any economic and commercial activity, including any rights to search for, cultivate, extract or exploit natural resources.

but does not mean real estate or other property, tangible or intangible, not acquired in the expectation or used for the purpose of economic benefit or other business purposes.

Any change in the form of an investment does not affect its character as an investment.

(g) "investor" means

in the case of Canada:

- (i) any natural person possessing the citizenship of or permanently residing in Canada in accordance with its laws; or
- (ii) any enterprise incorporated or duly constituted in accordance with applicable laws of Canada,

who makes the investment in the territory of Ukraine; and

in the case of Ukraine:

- (i) any natural person possessing the citizenship of or permanently residing in Ukraine in accordance with its laws; or
- (ii) any enterprise incorporated or duly constituted in accordance with applicable laws in Ukraine,

who makes the investment in the territory of Canada and who does not possess the citizenship of Canada;

- (h) "measure" includes any law, regulation, procedure, requirement, or practice;
- (i) "returns" means all amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties, fees or other current income;
- (j) "state enterprise" means an enterprise that is governmentally-owned or controlled through ownership interests by a government;

- (k) "territory" means:
- (i) in respect of Canada, the territory of Canada, as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea, over which Canada exercises, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas;
  - (ii) in respect of Ukraine, the territory of Ukraine, as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea, over which Ukraine exercises, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas.

## ARTICLE II

### Establishment, Acquisition and Protection of Investment

- (1) Each Contracting Party shall encourage the creation of favourable conditions for investors of the other Contracting Party to make investments in its territory.
- (2) Each Contracting Party shall accord investments or returns of investors of the other Contracting Party
  - (a) fair and equitable treatment in accordance with principles of international law, and
  - (b) full protection and security.
- (3) Each Contracting Party shall permit establishment of a new business enterprise or acquisition of an existing business enterprise or a share of such enterprise by investors or prospective investors of the other Contracting Party on a basis no less favourable than that which, in like circumstances, it permits such acquisition or establishment by:
  - (a) its own investors or prospective investors; or
  - (b) investors or prospective investors of any third state.
- (4)
  - (a) Decisions by either Contracting Party, pursuant to measures not inconsistent with this Agreement, as to whether or not to permit an acquisition shall not be subject to the provisions of Articles XIII or XV of this Agreement.
  - (b) Decisions by either Contracting Party not to permit establishment of a new business enterprise or acquisition of an existing business enterprise or a share of such enterprise by investors or prospective investors shall not be subject to the provisions of Article XIII of this Agreement.

## ARTICLE III

### Most-Favoured-Nation (MFN) Treatment after Establishment and Exceptions to MFN

- (1) Each Contracting Party shall grant to investments, or returns of investors of the other Contracting Party, treatment no less favourable than that which, in like circumstances, it grants to investments or returns of investors of any third State.

(2) Each Contracting Party shall grant investors of the other Contracting Party, as regards their management, use, enjoyment or disposal of their investments or returns, treatment no less favourable than that which, in like circumstances, it grants to investors of any third State.

(3) Subparagraph (3)(b) of Article II and paragraphs (1) and (2) of this Article do not apply to treatment by a Contracting Party pursuant to any existing or future bilateral or multilateral agreement:

- (a) establishing, strengthening or expanding a free trade area or customs union;
- (b) negotiated within the framework of the GATT or its successor organization and liberalizing trade in services; or
- (c) relating to:
  - (i) aviation;
  - (ii) telecommunications transport networks and telecommunications transport services;
  - (iii) fisheries;
  - (iv) maritime matters, including salvage; or
  - (v) financial services.

#### ARTICLE IV

##### National Treatment after Establishment and Exceptions to National Treatment

(1) Each Contracting Party shall grant to investments or returns of investors of the other Contracting Party treatment no less favourable than that which, in like circumstances, it grants to investments or returns of its own investors with respect to the expansion, management, conduct, operation and sale or disposition of investments.

(2) Subparagraph (3)(a) of Article II, paragraph (1) of this Article, and paragraphs (1) and (2) of Article V do not apply to:

- (a) (i) any existing non-conforming measures maintained within the territory of a Contracting Party; and
- (ii) any measure maintained or adopted after the date of entry into force of this Agreement that, at the time of sale or other disposition of a government's equity interests in, or the assets of, an existing state enterprise or an existing governmental entity, prohibits or imposes limitations on the ownership of equity interests or assets or imposes nationality requirements relating to senior management or members of the board of directors;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a);
- (c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with those obligations;

- (d) the right of each Contracting Party to make or maintain exceptions within the sectors or matters listed in the Annex to this Agreement.

## ARTICLE V

### Other Measures

- (1)
  - (a) A Contracting Party may not require that an enterprise of that Contracting Party, that is an investment under this Agreement, appoint to senior management positions individuals of any particular nationality.
  - (b) A Contracting Party may require that a majority of the board of directors, or any committee thereof, of an enterprise that is an investment under this Agreement be of a particular nationality, or resident in the territory of the Contracting Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.
- (2) Neither Contracting Party may impose any of the following requirements in connection with permitting the establishment or acquisition of an investment or enforce any of the following requirements in connection with the subsequent regulation of that investment:
  - (a) to export a given level or percentage of goods;
  - (b) to achieve a given level or percentage of domestic content;
  - (c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;
  - (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or
  - (e) to transfer technology, a production process or other proprietary knowledge to a person in its territory unaffiliated with the transferor, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority, either to remedy an alleged violation of competition laws or acting in a manner not inconsistent with other provisions of this Agreement.
- (3) Subject to its laws, regulations and policies relating to the entry of aliens, each Contracting Party shall grant temporary entry to citizens of the other Contracting Party employed by an enterprise who seeks to render services to that enterprise or a subsidiary or affiliate thereof, in a capacity that is managerial or executive.

## ARTICLE VI

### Miscellaneous Exceptions

- (1)
  - (a) In respect of intellectual property rights, a Contracting Party may derogate from Articles III and IV in a manner that is consistent with the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations done at Marrakesh April 15, 1994.

- (b) The provisions of Article VIII do not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations done at Marrakesh April 15, 1994.
- (2) The provisions of Articles II, III, IV and V of this Agreement do not apply to:
- (a) procurement by a government or state enterprise;
  - (b) subsidies or grants provided by a government or a state enterprise, including government-supported loans, guarantees and insurance;
  - (c) any measure denying investors of the other Contracting Party and their investments any rights or preferences provided to the aboriginal peoples of Canada; or
  - (d) any current or future foreign aid program to promote economic development, whether under a bilateral agreement, or pursuant to a multilateral arrangement or agreement, such as the OECD Agreement on Export Credits.
- (3) Investments in cultural industries in Canada are exempt from the provisions of this Agreement. "Cultural industries" means natural persons or enterprises engaged in any of the following activities:
- (a) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing;
  - (b) the production, distribution, sale or exhibition of film or video recordings;
  - (c) the production, distribution, sale or exhibition of audio or video music recordings;
  - (d) the publication, distribution, sale or exhibition of music in print or machine readable form; or
  - (e) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television or cable broadcasting undertakings and all satellite programming and broadcast network services.

## ARTICLE VII

### Compensation for Losses

Investors of one Contracting Party who suffer losses because their investments or returns on the territory of the other Contracting Party are affected by an armed conflict, a national emergency or a natural disaster on that territory, shall be accorded by such latter Contracting Party, in respect of restitution, indemnification, compensation or other settlement, treatment no less favourable than that which it accords to its own investors or to investors of any third State.

## ARTICLE VIII

### Expropriation

(1) Investments or returns of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except for a public purpose, under due process of law, in a non-discriminatory manner and against prompt, adequate and effective compensation. Such compensation shall be based on the genuine value of the investment or returns expropriated immediately before the expropriation or at the time the proposed expropriation became public knowledge, whichever is the earlier, shall be payable from the date of expropriation with interest at a normal commercial rate, shall be paid without delay and shall be effectively realizable and freely transferable.

(2) 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 its case and of the valuation of its investment or returns in accordance with the principles set out in this Article.

## ARTICLE IX

### Transfer of Funds

(1) Each Contracting Party shall guarantee to an investor of the other Contracting Party the unrestricted transfer of investments and returns. Without limiting the generality of the foregoing, each Contracting Party shall also guarantee to the investor the unrestricted transfer of:

- (a) funds in repayment of loans related to an investment;
- (b) the proceeds of the total or partial liquidation of any investment;
- (c) wages and other remuneration accruing to a citizen of the other Contracting Party who was permitted to work in connection with an investment in the territory of the other Contracting Party;
- (d) any compensation owed to an investor by virtue of Articles VII or VIII of the Agreement.

(2) Transfers 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, transfers shall be made at the rate of exchange applicable on the date of transfer.

(3) Notwithstanding paragraphs 1 and 2, a Contracting Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities;
- (c) criminal or penal offenses;
- (d) reports of transfers of currency or other monetary instruments; or

- (e) ensuring the satisfaction of judgments in adjudicatory proceedings.
- (4) Neither Contracting Party may require its investors to transfer, or penalize its investors that fail to transfer, the returns attributable to investments in the territory of the other Contracting Party.
- (5) Paragraph 4 shall not be construed to prevent a Contracting Party from imposing any measure through the equitable, non-discriminatory and good faith application of its laws relating to the matters set out in subparagraphs (a) through (e) of paragraph 3.

## ARTICLE X

### Subrogation

- (1) If a Contracting Party or any agency thereof makes a payment to any of its investors under a guarantee or a contract of insurance it has entered into in respect of an investment, the other Contracting Party shall recognize the validity of the subrogation in favour of such Contracting Party or agency thereof to any right or title held by the investor.
- (2) A Contracting Party or any agency thereof which is subrogated to the rights of an investor in accordance with paragraph (1) of this Article, shall be entitled in all circumstances to the same rights as those of the investor in respect of the investment concerned and its related returns. Such rights may be exercised by the Contracting Party or any agency thereof or by the investor if the Contracting Party or any agency thereof so authorizes.

## ARTICLE XI

### Investment in Financial Services

- (1) Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting or maintaining reasonable measures for prudential reasons, such as:
  - (a) the protection of investors, depositors, financial market participants, policy-holders, policy-claimants, or persons to whom a fiduciary duty is owed by a financial institution;
  - (b) the maintenance of the safety, soundness, integrity or financial responsibility of financial institutions; and
  - (c) ensuring the integrity and stability of a Contracting Party's financial system.
- (2) Notwithstanding paragraphs (1), (2) and (4) of Article IX, and without limiting the applicability of paragraph (3) of Article IX, a Contracting Party may prevent or limit transfers by a financial institution to, or for the benefit of, an affiliate of or person related to such institution or provider, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions.



- (3) (a) Where an investor submits a claim to arbitration under Article XIII, and the disputing Contracting Party invokes paragraphs (1) or (2) above, the tribunal established pursuant to Article XIII shall, at the request of that Contracting Party, seek a report in writing from the Contracting Parties on the issue of whether and to what extent the said paragraphs are a valid defence to the claim of the investor. The tribunal may not proceed pending receipt of a report under this Article.
- (b) Pursuant to a request received in accordance with subparagraph 3(a), the Contracting Parties shall proceed in accordance with Article XV, to prepare a written report, either on the basis of agreement following consultations, or by means of an arbitral panel. The consultations shall be between the financial services authorities of the Contracting Parties. The report shall be transmitted to the tribunal, and shall be binding on the tribunal.
- (c) Where, within 70 days of the referral by the tribunal, no request for the establishment of a panel pursuant to subparagraph 3(b) has been made and no report has been received by the tribunal, the tribunal may proceed to decide the matter.
- (4) Panels for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service in dispute.
- (5) Sub-paragraph 3(b) of Article II does not apply in respect of financial services.

## ARTICLE XII

### Taxation Measures

- (1) Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.
- (2) Nothing in this Agreement shall affect the rights and obligations of the Contracting Parties under any tax agreement. In the event of any inconsistency between the provisions of this Agreement and any such agreement, the provisions of that agreement apply to the extent of the inconsistency.
- (3) Subject to paragraph (2), a claim by an investor that a tax measure of a Contracting Party is in breach of an agreement between the central government authorities of a Contracting Party and the investor concerning an investment shall be considered a claim for breach of this Agreement unless the taxation authorities of the Contracting Parties, no later than six months after being notified of the claim by the investor, jointly determine that the measure does not contravene such agreement.
- (4) Article VIII may be applied to a taxation measure unless the taxation authorities of the Contracting Parties, no later than six months after being notified by an investor that he disputes a taxation measure, jointly determine that the measure is not an expropriation.
- (5) If the taxation authorities of the Contracting Parties fail to reach the joint determinations specified in paragraphs (3) and (4) within six months after being notified, the investor may submit its claim for resolution under Article XIII.