

AGREEMENT
BETWEEN
THE GOVERNMENT OF UKRAINE
AND
THE GOVERNMENT OF HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN OF BRUNEI DARUSSALAM
FOR THE PROMOTION AND RECIPROCAL PROTECTION OF
INVESTMENTS

The Government of Ukraine and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam (hereinafter collectively referred to as "the Contracting Parties" and each referred to as "the Contracting Party"),

Desiring to create favourable conditions for greater economic co-operation between them and in particular for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognising that the promotion and reciprocal protection under international agreements of such investments will be conducive to the stimulation of business initiative and will increase the prosperity in both countries,

Recognising the importance of the transfer of technology and human resources development arising from such investments,

Have agreed as follows:

ARTICLE 1
DEFINITIONS

For the purposes of this Agreement:

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 legislation 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 and any other form of participation in a company as well as securities issued by a Contracting Party;

c) claims to money or to any performance under the contract associated with an investment, having an economic value;

d) industrial and intellectual property rights, in particular copyrights, patent, utility model patents, registered designs, trade-marks, trade-names, trade and business secrets, technical processes, know-how and goodwill;

e) any right conferred by law or under contract and any licenses and permits pursuant to law, including the concessions to search for, extract, cultivate or exploit natural resources.

Any alteration to the form in which the assets are invested shall not affect their classification as an investment.

2. The term "territory" shall mean the territory of each Contracting Party as well as the maritime area, the continental shelf and exclusive economic zone of each Contracting Party over which it may exercise sovereignty, sovereign rights or jurisdiction in accordance with international law.

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

4. The term "investor" shall mean any national or legal person who invests in the territory of the other Contracting Party.

a) The term "national" shall mean a natural person who is a national of a Contracting Party under its applicable laws;

b) The term "legal person" shall mean:

i) in respect of Ukraine

Any legal person incorporated and registered under the law of Ukraine.

ii) in respect of Brunei Darussalam

Any kind of juridical entity, including any partnership, corporation, body corporate, firm, association or other organisation with or without legal personality that is duly incorporated or constituted or otherwise organised within Brunei Darussalam with limited or unlimited liability irrespective of whether or not their entities are directed to profit.

ARTICLE 2 PROMOTION AND PROTECTION OF INVESTMENTS

1. Each Contracting Party shall in its territory encourage as far as possible investments by investors of the other Contracting Party and admits such investments in accordance with its laws and regulations. Each Contracting Party shall at all times

ensure fair and equitable treatment to investments made in its territory by investors of the other Contracting Party.

2. Investments by investors of each Contracting Party shall at all times enjoy full protection and security in the territory of the other Contracting Party. Returns from investment and, in the event of their re-investment, the returns thereon shall enjoy the same protection as the investment. Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use or enjoyment of investments in its territory by investors of the other Contracting Party.

3. This Agreement shall also apply to investments made prior to its entry into force by investors of either Contracting Party in the territory of the other Contracting Party consistent with the letter's legislation.

ARTICLE 3

NATIONAL AND MOST-FAVOURED-NATION TREATMENTS

1. Neither Contracting Party shall subject investments in its territory owned or controlled by investors of the other Contracting Party to treatment less favorable than it accords to investments of its own investors or to investments of investors of any third State.

2. Neither Contracting Party shall subject investors of the other Contracting Party, as regards their activity in connection with investments in its territory, to treatment less favorable than it accords to its own investors or to investors of any third State.

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

a) any customs union, free trade area, a monetary union or similar international agreements leading to such unions or institutions or other forms of regional co-operation to which either Contracting Party is or may become a party;

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

ARTICLE 4 NATIONALISATION OR EXPROPRIATION

1. Investments of investors of either Contracting Party shall neither be expropriated nor nationalised nor subjected directly or indirectly to measures having effect equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose and on a non-discriminatory basis of and against prompt, adequate and effective compensation.

2. Such compensation shall be computed as equivalent to a fair market value of the investment immediately prior to the point of time when the actual or threatened expropriation has become publicly known. Where the market value cannot be ascertained properly the compensation shall be determined in accordance with internationally recognised accounting principles. The compensation shall include interest (LIBOR) from the date of expropriation until the date of payment. The amount of compensation shall be subject to review by due process of law. The amount of compensation finally determined shall be paid to the investors in freely convertible currencies, shall be effectively realisable and shall be repatriated in accordance with Article 6.

ARTICLE 5 COMPENSATION FOR LOSSES

1. Investors of a Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, or riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third country whichever is the most favourable as regards restitution, compensation or any other valuable consideration.

2. Without prejudice to Paragraph 1 of this Article, investors of one Contracting Party who in any of the situations referred to in that Paragraph suffer losses in the territory of the other Contracting Party resulting from:

a) requisitioning of their property by its forces or authorities, or

b) destruction of their property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

shall be accorded restitution or fair and adequate compensation.

3. Payments resulting under this Article shall be made in freely convertible currencies, shall be effectively realisable and shall be repatriated without delay in accordance with Article 6.

ARTICLE 6 FREE TRANSFERS

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, after the fulfillment of all tax obligations and other binding payments, the free transfer of payments in connection with an investment, in particular:

a) of the initial and additional capital amounts used to maintain, increase or expand investments;

b) of the returns;

c) in the repayment of loans;

d) of the proceeds accruing from the total or partial sale or total or partial liquidation of the investment;

e) of the compensation provided for in Articles 4 and 5;

f) amount necessary for payments under a contract, including amounts necessary for repayment of royalties and other payments resulting from licences, franchises, concessions and other similar rights.

g) earnings of investors of one Contracting Party who work in connection with an investment in the territory of the other Contracting Party.

2. The transfers shall be made without delay and, in any event, within a period of time not exceeding one month from the date on which the request for the transfer has been made. Transfers shall be effected at the applicable market exchange rate prevailing on the day of the transfer.

3. In the event a market exchange rate does not exist, the rate of exchange shall correspond to the cross rate obtained from those rates which would be applied by the International Monetary Fund on the date of payment for conversions of the currencies concerned into Special Drawing Rights.

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 or if an investment in the territory of one Contracting Party is insured against non-commercial risks under a system established by law and a payment is made by an insurer under an indemnity given in respect of that investment, the latter Contracting Party shall recognise:

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

b) that the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the same rights and enforce the same claims of that investor and shall assume the same obligations related to the investment. As regards the transfer of payments made by virtue of such subrogated rights or claims, Article 6 shall apply mutatis mutandis.

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

ARTICLE 8

SETTLEMENT OF DISPUTES BETWEEN CONTRACTING PARTIES

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall as far as possible be settled by the Contracting Parties through diplomatic consultations and negotiations.

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 Chairman who is a national of a third State which enjoys diplomatic relations with the Contracting Parties. The Chairman shall be appointed within three months from the date of last appointment of the other two members.

4. If the periods specified in paragraph 3 above have not been observed either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or if he is prevented from discharging the said function, the Vice-President shall make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he is, too, 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 make the necessary appointments.

5. The arbitral tribunal shall reach its decision by a majority of votes and its decisions shall be binding. Each Contracting Party shall bear the costs of its own arbitrator and its counsel in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitral tribunal may decide on any alternative system to share the costs. In all other respects, the arbitral tribunal shall determine its own procedure.

ARTICLE 9
SETTLEMENT OF INVESTMENT DISPUTES

1. Any dispute concerning investments between one Contracting Party and an investor of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties in disputes.

2. a) If a dispute cannot be settled within six months from the date when it has been raised by one of the parties in dispute, it shall, upon the request of one of the parties in dispute, be submitted to conciliation under the Convention on the Settlement of Investment Disputes between States and National of other States, opened for signature at Washington on March 18, 1965 ("the Convention").

b) Where a dispute is referred to conciliation under the Convention but conciliation proceedings are terminated other than by signing a settlement agreement, the dispute shall, upon the request of one of the parties in dispute, be submitted to arbitration under the Convention.

Each Contracting Party hereby declares its acceptance of such procedures.

3. In the event the parties in dispute have agreed otherwise, the provisions of Paragraphs 3 to 5 of Article 8 shall be applied mutatis mutandis on condition that the appointment of the members of the arbitration tribunal in accordance with paragraph 3 of Article 8 is effected by the parties in dispute and that, insofar as the period specified in Paragraph 3 of Article 8 are not observed, either party in dispute may, in the absence of other arrangements, invites the President of the International Court of Arbitration of the International Chamber of Commerce in Paris to make the required appointments. The arbitral tribunal shall determine its own procedures in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law.

4. During arbitration proceedings or the enforcement of an award, the Contracting Party involved in the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of its loss. In this context, the sum of compensation according to the arbitral award which may be paid to the investor of the Contracting Party shall not include the sum of compensation which was covered by the insurance company.

5. The arbitral award shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to execute the awards in accordance with its national legislation.

ARTICLE 10
OTHER OBLIGATIONS

1. Where a matter is governed simultaneously both by this Agreement and by another international agreement to which the 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 favorable 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 this Agreement, the more favourable provisions shall be accorded.

ARTICLE 11

APPLICABILITY OF THIS AGREEMENT

1. 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 to as well as after the entry into force of this Agreement.

2. Provisions of this Agreement shall not apply to the disputes concerning investments between the investors of one Contracting Party and the other Contracting Party which arose before this Agreement enters into force.

ARTICLE 12

AMENDMENTS

1. The provisions of this Agreement may be amended by mutual agreement of the Contracting Parties.

2. Such amendments shall be included in additional Protocols which will constitute an integral part of this Agreement.

ARTICLE 13

ENTRY INTO FORCE, DURATION AND TERMINATION

1. Each of the Contracting Parties shall notify the other in writing on the completion of their respective legal procedures for bringing this Agreement into force. This Agreement shall enter into force on the date of the later diplomatic notification.

2. This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either of the Contracting Parties shall have given written notice of termination to the other.

3. This Agreement shall be in force irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.

4. 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 of termination.

5. The Protocol annexed hereto shall form an integral part of this Agreement.

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

DONE in duplicate at *Kyiv*..... on *18th June*.....200*4*,
in the Ukrainian, Malay and English languages, all three texts being equally authentic. In case of difference of interpretation the English text will prevail.

**MYKOLA DERKACH
MINISTER OF ECONOMY
AND THE EUROPEAN
INTEGRATION
FOR THE GOVERNMENT OF
UKRAINE**



**PEHIN DATO HAJI YAHYA
PERMANENT SECRETARY
PRIME MINISTER'S OFFICE
FOR THE GOVERNMENT OF
HIS MAJESTY THE SULTAN
AND YANG DI-PERTUAN OF
BRUNEI DARUSSALAM**



**Protocol
To the Agreement
Between
The Government of Ukraine
And
The Government of His Majesty the Sultan
and Yang Di-Pertuan of Brunei Darussalam
For The Promotion and Reciprocal Protection of Investments**

On signing the Agreement between the Government of Ukraine and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam concerning the Promotion and Reciprocal Protection of Investments, the undersigned representatives have, in addition, agreed on the following provisions which shall form an integral part of the Agreement:

1. Additional Article 3

a) Measures undertaken by one Contracting Party in pursuit of its development objectives to stimulate the creation of industries in its territory and applied only to its nationals are not considered to be contrary to the obligations of Article 3, provided they do not substantially impair established and admitted investments of investors of the other Contracting Party. Measures that have been taken for reason of public order and security, public health or morality shall not be deemed "treatment less favourable" within the meaning of Article 3.

b) The following shall more particularly, though not exclusively, be deemed "activity" within the meaning of Article 3(2): the management, maintenance, enjoyment, sale or other disposition of an investment. The following shall, in particular, be deemed "treatment less favourable" within the meaning of Article 3: unequal treatment in the case of restrictions on the purchase of raw or auxiliary materials, of energy or fuel or of means of production or operation of any kind, unequal treatment in the case of impeding the marketing of products inside or outside the country, as well as any other measures having similar effects.

c) The provisions of Article 3 do not oblige a Contracting Party to extend to investors resident in the territory of the other Contracting Party tax privileges, tax exemptions and tax reductions which according to its tax laws are granted only to investors resident in its territory.

d) The Contracting Party shall within the framework of their national legislation give sympathetic consideration to an application for the entry and sojourn of persons of either Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment; the same shall apply to employed persons of either Contracting Party who in connection with an investment wish to enter the territory of the other Contracting Party and sojourn there to take up employment. In this context, an application for work permits shall also be given sympathetic consideration.

Whenever goods or persons connected with an investment are to be transported, each Contracting Party shall neither exclude nor hinder transport enterprises of the other Contracting Party and shall issue permits, in accordance with its laws and regulations, as required to carry out such transport.

**MYKOLA DERKACH
MINISTER OF ECONOMY
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