

AGREEMENT
BETWEEN
THE GOVERNMENT OF MONTENEGRO
AND
THE GOVERNMENT OF THE REPUBLIC OF AZERBAIJAN
ON
PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

PREAMBLE

The Government of Montenegro and the Government of the Republic of Azerbaijan, hereinafter referred to as Contracting Parties,

Desiring to intensify economic cooperation to the mutual benefit of both states,

Intending to create and maintain fair and equitable conditions for investments by investors of one Contracting Party in the state territory of the other Contracting Party,

Recognizing that the promotion of international investment flows and the protection of investments of one Contracting Party in the State territory of the other Contracting Party on the basis of this Agreement will be conducive to stimulation of business initiatives,

Desiring to achieve these objectives in a manner consistent with the protection of health, safety, and the environment and the promotion of sustainable development,

Have agreed as follows:

ARTICLE 1 Definitions

For the purpose of this Agreement:

1. The term "Investment" means any kind of asset invested directly by an investor of one Contracting Party wholly or exclusively in the state territory of the other Contracting Party, in accordance with national legislation of the Contracting Party in whose territory the investment is made and shall include in particular, though not exclusively:
 - a. Movable and immovable property, any property rights, such as, mortgages, liens, pledges, leases, usufruct and other similar substantial rights under the law;
 - b. A company or shares, stocks, or any other form of participation in companies;
 - c. Money, claims to money and claims under a contract having financial value;
 - d. Intellectual property rights, such as patents, copyrights, technical processes, trade marks; industrial property rights, such as, country origin of product (goods), business names, know-how and goodwill and other rights recognized according to national legislation of the Parties;
 - e. Concessions conferred by law, by administrative act or under a contract by a competent authority including concessions to search for, develop, extract and exploit natural resources.
2. The term "investor" means:
 - a. any natural person having the nationality of a Contracting Party in accordance with its national legislation; or
 - b. a company or other legal entity incorporated in accordance with the national legislation of one Contracting Party, and having its seat and conducting substantial business activities within the State territory of that Contracting Party;

who makes an investment in the state territory of the other Contracting Party in accordance with the legislation of the latter Contracting Party. If the investor is owned or controlled by persons having the nationality of a State that has no diplomatic relations with the Contracting Party in whose territory the investment is made, this investor will not benefit from this Agreement.

3. The term "return" shall mean amount yielded by investment, including in particular, though not exclusively, shall include profits, interest, dividends, royalties, any fees, capital gains and other payments in kind related to an investment.

Returns shall enjoy the same treatment as the original investment.

4. The term "territory" means:

- a. with respect to Montenegro the territory of Montenegro which is under its sovereignty as well as the area outside the territorial water, airspace and submarine areas over which Montenegro exercise sovereign and jurisdictional rights in respect of any activity carried on in its water, sea bed, sub soil, in connection with the exploration for or the exploitation of natural resources by virtue of its law and international law.
- b. with respect to the Republic of Azerbaijan, the territory of the Republic of Azerbaijan, including the respective Caspian Sea sector, over which the Republic of Azerbaijan exercises, in accordance with its national law and international law, sovereign rights or jurisdiction.

5. Any alteration of the form in which assets are invested or reinvested shall not affect their qualification as investments provided that such alteration is not in conflict with the provisions of this Agreement and the national legislation of the Contracting Party in whose state territory the investment is made.

ARTICLE 2

Promotion and Protection of Investments

1. Each Contracting Party shall promote, in its state territory, investments made by investors of the other Contracting Party and shall admit such investments in accordance with national legislation.

2. Each Contracting Party shall at all time accord in its state territory to investments of investors of the other Contracting Party treatment in accordance with its national legislation including fair and equitable treatment and full and constant protection and security.

3. Each Contracting Party shall not impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment, acquisition or disposal of investments in its state territory of investors of the other Contracting Party.

4. Each Contracting Party shall not impose mandatory measures on investments by investors of the other Contracting Party concerning purchase of materials, means of production, operation, transport, marketing of its products or similar orders having unreasonable or discriminatory effects.

5. Each Contracting Party shall, within the framework of its national legislation, consider in good faith all applications for necessary permits in connection with investments in its state territory, including authorizations for engaging executives, managers, specialists and technical personnel of the investors' choice.

ARTICLE 3
Treatment of Investments

1. Investments made by investors of one Contracting Party in the State territory of the other Contracting Party, or returns related thereto, shall be accorded treatment no less favourable than the Host Contracting Party accords to the investments and returns made by its own investors or by investors of any third State, whichever is the most favourable to the investor.
2. Investors of one Contracting Party shall be accorded by the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than the latter Contracting Party accords its own investors or to investors of any third State, whichever is the most favourable to the investor.
3. The provisions of this Agreement 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 by virtue of:
 - a. any existing or future free trade area, customs union, common market or regional labour market agreement to which one of the Contracting Parties is or may become a party,
 - b. any international agreement or arrangement relating wholly or partly to taxation, or
 - c. any multilateral convention or treaty relating to investments, of which one of the Contracting Parties is or may become a party.
4. Nothing in this Agreement affects the rights and obligations of either Contracting Party under any applicable bilateral or multilateral tax treaty.
5. For the avoidance of doubt, the present Article shall apply only in respect of the kinds of treatment offered in Articles 2 to 6 of this Agreement, and shall not apply in respect of an Investor's rights to submit disputes arising under this Agreement to any dispute settlement procedure.

ARTICLE 4
Access to investor information and Transparency

The Contracting Party has the right to seek information concerning the potential investor of the other Contracting Party, including its corporate governance history and its investment practices. The Contracting Party has to protect confidential business information received. The Contracting Party may make the information provided available to the public in the community where the investment will be located, subject to the protection of confidential business information and to other applicable domestic legislation

ARTICLE 5
Expropriation and Compensation

1. Neither of the Contracting Parties shall undertake measures of expropriation, nationalization or any other measure having the same effect against investments belonging to investors of the other Contracting Party (hereinafter "expropriation"), except when the measures are undertaken in the public interest, on a non-discriminatory basis, under due legal procedure, whereby, the investor shall receive effective and adequate compensation.

2. Such compensation shall represent the market value of the expropriated investment immediately before the expropriation or the impending expropriation becomes public knowledge whichever is earlier.

3. The amount of compensation shall be settled in convertible currency on the basis of the market rate of exchange applicable for that currency on the day of transfer. Compensation shall also include interest at a commercial rate established on a market basis for the currency in question from the date of expropriation until the date of actual payment.

4. The investor whose investments are expropriated, shall have the right to prompt review by a State judicial or other competent authority of the Host Contracting Party of its case and of valuation of its investments in accordance with the principles set out in this Article.

5. Investors of either Contracting Party whose investments suffer losses due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot in the state territory of the other Contracting Party shall be accorded treatment, as regards restitution, indemnification, compensation or other settlement, which shall not be less favorable than that accorded to its own investors or to investors of any third state whichever is the most favourable to the investor.

6. These payments shall be effectively realizable, freely convertible and immediately transferable.

7. Without prejudice to paragraph 3 of this Article, an investor of one Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in the state territory of the other Contracting Party resulting from:

- a. requisitioning of its investment or a part thereof by the latter's armed forces or authorities, or
- b. destruction of its investment or a part thereof by the latter's armed forces or authorities, which was not required by the necessity of situation.

shall be accorded adequate compensation in the light of the particular circumstances.

ARTICLE 6

Free Transfer

1. In accordance with its national legislation each Contracting Party, shall in good faith ensure to investors of the other Contracting Party the free transfer, into and out of its state territory, of payments in connection with an investment, in particular, though not exclusively:

- a. capital and additional amounts necessary for maintenance and expansion of the investments;
- b. returns;
- c. funds for repayment of loans directly related to a specific investment, including interest according to valid contract;
- d. royalties and fees;
- e. proceeds from total or partial sale or liquidation of an investment;
- f. compensation provided for in Article 5;
- g. earnings of nationals of one Contracting Party allowed to work in relation to investment in the state territory of the other Contracting Party.
- h. payments in respect of management fees;
- i. payments arising out of the settlement of a dispute.

2. Transfers shall be made, without any delay, in a freely convertible currency and at the applicable market rate of exchange applicable on the date of transfer in the currency to be

transferred. If a market rate is unavailable the applicable rate of exchange shall be the most recent rate of exchange for conversion of currencies into Special Drawing Rights.

3. Notwithstanding paragraphs 1 and 2 of this Article, a Contracting Party may delay or prevent a transfer through the equitable, non-discriminatory and good faith application of measures ensuring investors' compliance with the Host Contracting Party's national legislation relating to
 - a. the payment of taxes and dues;
 - b. bankruptcy or insolvency proceedings, or the protection of the rights of creditors;
 - c. criminal or penal offences; and
 - d. ensuring compliance with orders or judgments of the courts or tribunals of the Host Contracting Party.

ARTICLE 7 Subrogation

1. If a Contracting Party or its designated agency (hereinafter referred to as "insurer") makes payment to its own investors under a guarantee or insurance against non-commercial risks in respect of investments made in the state territory of the other Contracting Party, that Contracting Party shall recognize the subrogation to the insurer, of all rights and claims arising from that investment and shall recognize that the insurer is entitled to exercise these rights and to ensure execution of the claims to the same extent as the original investor.
2. The subrogated rights or claims shall not exceed the basic rights or claims of the investor.

ARTICLE 8 Settlement of Disputes between one Contracting Party and an Investor of the Other Contracting Party

1. Disputes between one of the Contracting Parties and an Investor of the other Contracting Party shall be notified in writing, including detailed information, by the investor to the Contracting Party in whose territory the investment is made. Any dispute between a Contracting Party and an investor of the other Contracting Party concerning an alleged violation of one or more of the provisions of this Agreement should, if possible, be settled amicably. The place of the negotiations shall be the capital city of the Contracting Party to the dispute unless the disputing parties otherwise agree. An Investor's right to submit dispute to dispute settlement procedures set out in subparagraph 2 of this Article, shall not be frustrated or denied merely by the refusal of the Contracting Party to the dispute to participate in negotiations.
2. If the dispute cannot be settled amicably within six months from the date of the written notification, by which the other Contracting Party was informed about the subject of the dispute, the investor concerned may suggest, at his own choice, for the dispute to be submitted either to:
 - the competent court of the Contracting Party in whose state territory the investment is made;
 - "ad hoc" court of arbitration established under the Arbitration Rules of Procedures of the United Nations Commission on International Trade Law (UNCITRAL);
 - The International Center for Settlement of Investment Disputes (ICSID), in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, open for signature since 18.03.1965 in Washington DC, if both Contracting Parties signed this Convention.

3. Once the dispute has been submitted to the competent court of the Contracting Party or international arbitration, the choice of one or the other procedure shall be definitive.
4. Dispute shall be resolved in accordance with law, applying the terms of this Agreement, the State law of the Contracting Party to the dispute, and principles of public international law.
5. The arbitration decisions shall be final and binding on the parties to the dispute. Each Contracting Party shall undertake to execute the decisions in accordance with its national legislation.
6. Neither of the Contracting Parties, which is a party to a dispute, can raise an objection, at any phase of the arbitration procedure or of the execution of an arbitral award, on account of the fact that the investor, which is the opposing party of the dispute, had received an indemnification covering a part or the whole of its losses by virtue of an insurance.

ARTICLE 9

Settlement of Disputes between the Contracting Parties

1. Disputes between Contracting Parties regarding the interpretation and application of the provisions of this Agreement shall, as far as possible, be settled through negotiations.
2. If both Contracting Parties cannot reach an agreement within six months after the beginning of the dispute between them, upon request by either Contracting Party, it shall be submitted to an arbitral Tribunal constituted in accordance with this Article.
3. Such an Arbitral Tribunal shall be constituted for each individual 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. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within four (4) 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 President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or is otherwise 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 or is not otherwise prevented from discharging the said function, shall be invited to make the necessary appointments.
5. With regard to other provisions made by the Contracting Parties, the court shall determine its own rules and procedures.
6. The Arbitral Tribunal shall reach its decision on the basis of this Agreement and in accordance with international law applicable between the Contracting Parties. The court shall reach its decisions by a majority of votes.
7. The decisions of the court shall be final and binding on both Contracting Parties.

8. Each Contracting Party shall bear the costs of its own member of the court and its representation in the arbitration proceedings; the costs of the chairman and remaining costs shall be borne in equal parts by the Contracting Parties.

ARTICLE 10 **More Favorable Provisions**

If the domestic law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favorable than provided by this Agreement, such regulation shall, to extent that it is more favorable, prevail over this Agreement.

ARTICLE 11 **Consultations**

The Contracting Parties agree to consult promptly, on the request of either, to resolve any dispute arising between them in connection with this Agreement, or to review any matter relating to the implementation or application of this Agreement or to study any other issue that may arise from this Agreement. Such consultations shall be held between the competent authorities of the Contracting Parties at a place and at a time agreed upon by the Contracting Parties through diplomatic channels.

ARTICLE 12 **Essential Security Interests**

1. Nothing in this Agreement shall be construed to prevent any Contracting Party:
 - a. to undertake any actions which it considers as necessary for the purpose of protecting its essential security interests;
 - undertaken during war, armed conflict, or other emergency in that Contracting Party or international relations; or
 - related to implementation of national policies or international agreements referring to non-proliferation of weapon;
 - b. to undertake any measure in line with its obligations under the United Charter for maintenance of international peace and security; or
 - c. to undertake any measure necessary for maintenance of public order when there is genuine and sufficiently serious threat to one of the fundamental interests of society;
 - d. to undertake any measures related to balance of payments and external financial difficulties, as well as monetary and exchange rate policies.
2. Contracting Party's essential security interests may include interests deriving from its membership in a customs, economic or monetary union, a common market or a free trade area.

ARTICLE 13 **Application of Agreement**

The provisions of this Agreement shall apply to investments made by investors of the one Contracting Party prior to, as well as after the entry into force of this Agreement and shall be

applicable from the date of its entry into force, but shall not apply to any dispute raised or any claim concerning investments made before the entry into force of this Agreement.

ARTICLE 14 Additions and Amendments

Any additions and amendments may be made to this Agreement by mutual consent of the Contracting Parties. Such additions and amendments shall be made in a form of separate protocols being an integral part of this Agreement and shall enter into force in accordance with the provision of Article 15 of this Agreement.

ARTICLE 15 Entry into Force, Duration and Termination

1. This Agreement shall enter into force on the thirtieth day following the date of last notification by the Contracting Parties, in writing and through diplomatic channels, of the completion of the respective internal legal procedures necessary to that effect.
2. This Agreement shall remain in force for an initial period of ten (10) years and shall thereafter remain in force for a period of ten years unless one Contracting Party notifies the other Contracting Party through diplomatic channels in writing twelve (12) months in advance of its intention to terminate this Agreement.
3. In respect of investment made prior to the date of termination of this Agreement the provisions of Articles 1 to 14 shall remain in force for a further period of ten years from the date of termination of this Agreement.
4. This Agreement shall be repealed on the date of the accession of either Contracting Party to European Union.

In witness whereof the undersigned, being duly authorized thereto, has signed the present Agreement.

Done in Baku, on 16 September 2011, in two originals, each in Montenegrin, Azerbaijani and English languages and all texts being equally authentic. In case of divergence in interpretation the English text shall prevail.

For the Government of
Montenegro



For the Government of
the Republic of Azerbaijan

