

## МЕЃУНАРОДНИ ДОГОВОРИ

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

The Government of the Republic of Macedonia and the Government of the Republic of Azerbaijan, hereinafter referred to as the "Contracting Parties";

DESIRING to intensify economic cooperation to the mutual benefit of both countries, 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;

RECOGNISING that the promotion of bilateral 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 in the state territory of the other Contracting Party, in accordance with the national legislation of the Contracting Party in whose state territory the investment is made and shall include, though not exclusively:
  - a. movable and immovable property, any property rights, such as mortgages, liens, pledges, leases, usufruct and similar substantial rights;
  - b. a company, or shares stocks, or any other kind of participation in companies;
  - c. money, claims to money and loans directly related to an investment under a contract having a financial value except claims to money that arise solely from a commercial contract for the sale of goods and services; and the extension of credit in connection with commercial contract;
  - 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 similar rights recognized according to national legislation of the Contracting Parties;
  - e. concessions conferred by law, by administrative act or under a contract by a competent authority including concessions to search for, process, extract and exploit natural resources.
2. The term "investor" means for either Contracting Party:
  - 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;

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who makes an investment in the state territory of the other Contracting Party in accordance with the national 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 state territory the investment is made, this investor will not benefit from this Agreement.

3. The term "return" means amounts yielded by an investments and in particular, though not exclusively, shall include profits, interest, dividends, royalties, any fees, capital gains and other current income in kind related to an investment.

Returns shall enjoy the same treatment as the original investment.

4. The term "Territory" means in respect to:

- a. The Republic of Macedonia, the territory of the Republic of Macedonia, including land, water and airspace, over which the Republic of Macedonia exercises sovereign rights and jurisdiction, in accordance with the international law.
- b. 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 and 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 territory, investments made by investors of the other Contracting Party and admit such investments in accordance with its 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, 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 measures having unreasonable or discriminatory effects.

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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****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 national legislation.

**ARTICLE 4****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. Notwithstanding the paragraphs 1 to 3 above, the most favoured nation treatment shall not apply in respect of an investor's rights to submit disputes arising under this Agreement to any dispute settlement procedure.

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**ARTICLE 5**  
**Expropriation**

1. Neither of the Contracting Parties shall take measures of expropriation, nationalization or any other measure having the same effect, against investments belonging to investors of the other Contracting Party (hereinafter "expropriation"), unless the measures are taken in the public interest, on a non-discriminatory basis under national legislation and provided that provisions had been made for effective and adequate compensation. Such compensation shall amount to the market value of the expropriated investment immediately before the expropriation or the impending expropriation becomes publicly known whichever is earlier. The amount of compensation shall be settled in the 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.

2. 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.

**ARTICLE 6**  
**Compensation**

1. Investors of either Contracting Party who suffer losses of their investments in the state territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favorable than that accorded to its own investors or to investors of any third State, whichever is the most favourable to the investor. These payments shall be effectively realizable, freely convertible and immediately transferable.

2. Notwithstanding paragraph 1 of this Article, investors of one Contracting Party who suffer losses in the territory of the other Contracting Party resulting from:

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

shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective.

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**ARTICLE 7****Transfers**

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. the capital and additional sums necessary for the maintenance and development of the investment;
- b. returns;
- c. funds in repayment of loans including interest regularly contracted and documented and directly related to a specific investment;
- d. royalties and fees;
- e. the proceeds from a total or partial sale or liquidation of an investment;
- f. compensation provided for in Articles 5 and 6;
- g. the earnings of nationals of one Contracting Party who are allowed to work in connection with an investment in the state territory of the other;
- h. payments in respect of management fees; and
- i. payments arising out of the settlement of a dispute.

2. Transfers shall be effected without delay in a freely convertible currency and at the 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 other offences; and
- d. orders or judgments of the courts or tribunals of the Host Contracting Party.

**ARTICLE 8****Subrogation**

1. If a Contracting Party or its designated agency makes a payment to any of its investors under a guarantee or insurance, it has contracted in respect of non-commercial risks of an investment, the other Contracting Party shall recognize the validity of the subrogation in favor of the former Contracting Party or its designated agency to any right or title held by the investor.

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2. The Contracting Party or its designated agency that is subrogated in the rights of an investor shall be entitled to the same rights as those of the investor and to the extent that they exercise such rights they shall do so subject to the obligations of the investor pertaining to such insured investment.

**ARTICLE 9****Settlement of Disputes between an Investor of one Contracting Party and 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 Host Contracting Party of the investment. Any dispute between a Contracting Party and an investor of the other Contracting Party should be settled by means of a friendly agreement. The place of the negotiations shall be the capital city of the Contracting Party to the dispute unless the disputing parties otherwise agree.

2. If the dispute cannot be settled amicably within six months from the date of the written notification by which the other Contracting Party has been advised about the subject of the dispute, the investor concerned may suggest, at his own choice, that the dispute be submitted to:

- a. The competent court of the Contracting Party in the state territory of which the investment has been made; or
- b. The "ad hoc" court of arbitration established under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law (UNCITRAL); or
- c. The International Center for Settling Investment Disputes (ICSID), in accordance with the Convention for settling Investment Disputes between States and Citizens, open for signature since 18.03.1965 in Washington DC, if both Contracting Parties signed this Convention.

3. An investor who has already submitted a claim concerning the conduct or measure of the Contracting Party that is alleged to give rise to the dispute to the competent State courts of the Contracting Party or to any other previously agreed dispute settlement procedures, shall not be entitled to submit the dispute to international arbitration as offered in paragraph 2 of this Article.

4. The arbitration award shall be based on:

- The provisions of this Agreement;
- The national law of the Contracting Party in whose state territory the investment was made, including the rules relative to conflicts of law; and
- The rules and the universally accepted principles of international law.

5. The arbitration decisions shall be final and binding for the Contracting Parties to the dispute. Each Contracting Party undertakes to execute the decisions in accordance with its national law.

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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 10****Settlement of Disputes between 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 by consultation and negotiation through diplomatic channels.

2. If both Contracting Parties cannot reach an agreement within six months after the beginning of the dispute between themselves, upon request of either Contracting Party the dispute shall be submitted to an arbitration 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. Subject to other provisions made by the Contracting Parties, the tribunal shall determine its own rules and procedure. 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 tribunal shall reach its decisions by a majority of votes.

6. The decisions of the tribunal are final and binding on both Contracting Parties.

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

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**ARTICLE 11**  
**Consultations and Exchange of Information**

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 from taking any actions that it considers for necessary for the protection of its essential security interests:
  - a. Taken in time of war, or armed conflict, or other emergency in that Contracting Party or in international relations;
  - b. Related to the implementation of national policies or international agreements respecting the non-proliferation of weapons;
  - c. Taking any measure in pursuance to its obligations under the United Nations Charter for the maintenance of international peace and security;
  - d. Taking any measure necessary for the maintenance of public order. The public order exceptions may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.
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 other Rules**

If the national legislation 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 by investors of the other Contracting Party to a treatment more favorable than is provided for by this Agreement, such regulation shall to extent that it is more favorable prevail over this Agreement.

**ARTICLE 14**  
**Application of the Agreement**

This Agreement shall apply to investments made in the state territory of one of the Contracting Parties in accordance with its national legislation by investors of the other Contracting Party prior to as well as after the entry into force of this Agreement, but shall not apply to any dispute raised or any claims concerning investments made before the entry of this Agreement into force.



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**ARTICLE 15**  
**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 16 of this Agreement.

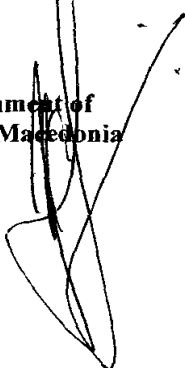
**ARTICLE 16**  
**Entry into force, Duration and Termination**

1. This Agreement shall enter into force on the date of the receipt through diplomatic channels of the latter written notification informing that the internal procedures required for the entry into force of this Agreement have been completed by the Contracting Parties.
2. This Agreement shall remain in force for the period of ten (10) years and shall be automatically prolonged thereafter for the next ten year periods unless, one year before the expiration of the initial or any subsequent ten (10) years period, either Contracting Party notifies in writing through diplomatic channels the other Contracting Party of its intention to terminate the Agreement.
3. With respect to investments made prior to the date when the notice of termination of this Agreement become effective, the provisions of this Agreement shall continue to be effective for a period of ten years from the date of termination of this Agreement.

IN WITNESS WHEREOF, the undersigned representatives, duly authorized thereto, have signed the present Agreement.

Done in Баки, on 19 APRIL 2013 in two original versions, in Macedonian, Azerbaijani and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

**For the Government of  
the Republic of Macedonia**



**For the Government of  
the Republic of Azerbaijan**



## Член 3

Министерството за финансии се определува како надлежен орган на државната управа кој ќе се грижи за извршување на Договорот од членот 1 од овој закон.

## Член 4

Овој закон влегува во сила осмиот ден од денот на објавувањето во „Службен весник на Република Македонија“.