



МІНІСТЕРСТВО
ЮСТИЦІЇ

COMMON MISTAKES NEGOTIATING BITS,
AND HOW TO UNDO THEM:
THE PERSPECTIVE OF A STATE

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Ministry of Justice of Ukraine

- i. natural persons having the nationality of that Contracting Party;
- ii. legal persons constituted under the law of that Contracting Party;
- iii. legal persons not constituted under the law of that Contracting Party but controlled by natural persons as defined in i. or by legal persons as defined in ii. above.

- a. a natural person having the nationality of that Contracting Party in accordance with its applicable laws and regulations;
- b. an enterprise of that Contracting Party, that makes investments in the Area of the other Contracting Party.

The term 'investments' shall comprise every kind of asset and more particularly, though not exclusively:

- i. movable and immovable property as well as any other rights in rem in respect of every kind of asset;
- ii. rights derived from shares, bonds and other kinds of interests in companies and joint ventures;
- iii. claim to money, to other assets or to any performance having an economic value;
- iv. rights in the field of industrial and intellectual property, such as copyrights, patents, industrial design or models, trade or service marks, trade names, technical processes, goodwill and know-how and any other similar rights;
- v. rights granted under public law, including rights to prospect, explore, extract or exploit natural resources as well as all other rights given by law, by contract or by decision of competent authorities in accordance with the law.

The term “investment” means every kind of asset owned or controlled, directly or indirectly, by an investor, including:

- a. an enterprise and a branch of an enterprise;
- b. shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;
- c. bonds, debentures, loans and other forms of debt, including rights derived therefrom;

Note: Notwithstanding subparagraph (c):

- (i) a loan to or debt instrument issued by a financial institution is an investment only where it is treated as regulatory capital by a Contracting Party in whose Area the financial institution is located;
- (ii) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument of a financial institution referred to in (a), is not an investment; and
- (iii) a loan to, or debt instrument issued by, a Contracting Party or a state enterprise thereof is not an investment.

- d. rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;
- e. claims to money and to any performance under contract having a financial value;
- f. intellectual property rights, including copyrights and related rights, patent rights and rights relating to utility models, trademarks, industrial designs, layout-designs of integrated circuits, new varieties of plants, trade names, indications of source or geographical indications and undisclosed information;
- g. rights conferred pursuant to laws and regulations or contracts such as concessions, licenses, authorizations, and permits, including those for the exploration and exploitation of natural resources; and
- h. any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges.

Investments may also include amounts yielded by investments that are re-invested, in particular, profit, interest, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as investments.

Note: It is confirmed that nothing in the Agreement shall apply to investments made by investors of a Contracting Party in violation of the applicable laws and regulations of either or both of the Contracting Parties.

A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is an enterprise of the other Contracting Party and to its investments if the enterprise is owned or controlled by an investor of a non-Contracting Party and the denying Contracting Party: (a) does not maintain diplomatic relations with the non-Contracting Party; or (b) adopts or maintains measures with respect to the non-Contracting Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Agreement were accorded to the enterprise or to its investments. .

A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is an enterprise of the other Contracting Party and to its investments if the enterprise is owned or controlled by an investor of a non-Contracting Party and the enterprise has no substantial business activities in the Area of the other Contracting Party.

Note: For the purposes of this Article, an enterprise is:

- (a) “owned” by an investor if more than fifty (50) percent of the equity interest in it is owned by the investor; and
- (b) “controlled” by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions.

English Original

Where the dispute is referred to international arbitration, **the investor and the Contracting Party concerned in the dispute may agree** to refer to the dispute either to... [the options that follow are ICSID, ICC or ad hoc arbitration under special agreement or UNCITRAL Rules]

Ukrainian Original

Коли спір передано до міжнародного арбітражу, зацікавлений у спорі **інвестор Договірної Сторони може погодитися** передати спір або до...

Translation of Ukrainian Original

Where the dispute has been referred to international arbitration, **the Contracting Party investor concerned in the dispute may agree** to refer to the dispute either to...

The present Agreement ... shall remain in force for a period of fifteen years.

Unless notice of termination has been given by either Contracting Party at least six months before the date of the expiry of its validity, the present Agreement shall be extended tacitly for periods of ten years, each Contracting Party reserving the right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.

In respect of investments made before the date of the termination of the present Agreement the foregoing Articles thereof shall continue to be effective for a further period of fifteen years from that date.

This Agreement shall remain in force for ten years from the date of notification in accordance with Article 12 and shall remain in force for a further period of five years if one of the two Contracting Parties does not withdraw it in writing at least one year before the date of its termination.

In the case of investments carried out before the date of termination as provided for in paragraph 1 of this Article, the provisions of Articles 1 to 11 shall remain in force for the next 5 years after the specified dates.

(Terminated by consent)



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THANK YOU FOR ATTENTION

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