

# **AGREEMENT ON RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN AND THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN**

## **PREAMBLE**

The Government of the Republic of Kazakhstan and the Government of the Islamic Republic of Iran, hereinafter referred as the "Contracting Parties",

Desiring to strengthen and expand the economic cooperation between the Contracting Parties,

Intending to create and maintain favourable conditions for investments by the investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing the need to promote and protect investments of the investors of one Contracting Party in the territory of the other Contracting Party,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1 -The term "investment" means any kind of property or asset, as described below which is invested by the investors of one Contracting Party in the territory of the other Contracting Party:

- (a) Movable and immovable property as well as rights related thereto,
- (b) Shares or any other kind of participation in companies as well as rights related thereto;
- (c) Right to claim money or to any performance having an economic value;
- (d) Intellectual and industrial property rights such as patents, service marks, industrial designs or models, trade-marks, trade names, national economic secrets, know-how and goodwill;
- (e) Rights to search for, extract or exploit natural resources as well as other business rights, given by law, by contract or by decision of the authority in accordance with law;
- (f) Reinvestment of returns.

2. The Term "investor" refers with regard to either Contracting Party to:

- (a) Natural persons, who according to the laws of that Contracting Party, are considered to be its nationals;
- (b) Legal entities, which are established under the laws of that Contracting Party and have their seat together with their real economic activities in the territory of that Contracting Party; who invest in the territory of the other Contracting Party.

3. The term "returns" means resources, received as the result of investment or related with them in monetary or cash form, including profit dividends, grants for the enterprise management agreements, technical and service agreements and any other legal forms of returns.

4. The term "territory" means with respect to both the Contracting Parties: the territories under the sovereignty or jurisdiction of each Contracting Party and also includes their relevant maritime territories.

## **Article 2. Promotion of Investments**

1. Either Contracting Party shall encourage and create favourable conditions for its nationals to invest in the territory of the other Contracting Party.
2. Either Contracting Party shall encourage and create favourable conditions for nationals of the other Contracting Party to invest in its territory.
3. Either Contracting Party shall provide for fair and equal treatment to the investments of the investor of the other Contracting Party and will not infringe upon the management, function, operation of these investments by unreasonable and discriminatory measures.

## **Article 3. Admission of Investments**

1. Either Contracting Party shall admit the investments of investors of the other Contracting Party in its territory in accordance with its laws and regulations.
2. When a Contracting Party shall have admitted an investment in its territory, it shall grant all necessary permits for the proper realization of such an investment.

## **Article 4. Protection of Investments**

1. The investments of the investors of one Contracting Party, effected within the territory of the other Contracting Party in accordance with the laws and regulations of the latter, shall receive in the other Contracting Party full legal protection and fair treatment, not less favourable than that accorded to the investors of any third state which are in a comparable situation.
2. If a Contracting Party accords special advantages to investors of any third state by virtue of an agreement establishing a free trade area, a customs union, a common market or a similar regional organization or by virtue of an agreement on the avoidance of double taxation, it shall not be obliged to accord such advantages to investors of the other Contracting Party.

## **Article 5. More Favourable Provisions**

1. Notwithstanding the terms set forth in the present Agreement, more favourable provisions which have been or may be agreed upon by either of the Contracting Parties with an investor of the other Contracting Party are applicable.
2. If legislation of one Contracting Party or current circumstances arisen between the Contracting Parties in accordance with international law contain additional regulations which, in general or in details, provides for more favourable treatment, in relation to investments made by the investors of the other Contracting Party, than stipulated in the present Agreement, then such regulations, to the extent that are more favourable shall prevail over the present Agreement.

## **Article 6. Expropriation and Compensation**

1. The investment of the investors of one Contracting Party shall not be expropriated, nationalized or subjected, directly or indirectly, to measures of similar effect by the other Contracting Party except for a public purpose, in a non-discriminatory manner, upon payment of prompt, effective and just compensation and in accordance with due process of law.
2. Compensation for expropriation of an investment shall be equivalent to market value of the investment immediately before the expropriatory action was taken or became known.
3. In case of delay in the payment of the compensation, the investor and the host state shall negotiate and agree on the financial compensation for the delay period between the-date of entitlement of the investor to compensation and the date of payment.

## **Article 7. Indemnification**

Investors of either Contracting Party, whose investments in the territory of the other Contracting Party suffer losses due to a war or any other armed conflict, revolution, state of emergency or rebellion or other similar events in the territory of the other Contracting Party, shall be accorded, by the other Contracting Party, treatment no less favourable than that accorded to its own investors or to investors of any other third country, whichever is most favourable treatment, as regards compensation, restitution and indemnification in relation to such losses.

## **Article 8. Repatriation and Transfer**

1. Each Contracting Party shall guarantee in good faith all transfers related to an investments to be made freely and without unreasonable delay into and out of its territory in accordance with the procedures stated by its legislation. Such transfers include:

- (a) Returns,
- (b) Proceeds from the sale or liquidation of all or any part of an investment,
- (c) Compensation pursuant to Articles 6 and 7,
- (d) Payments under the credit agreements as well as remunerations connected with the intellectual and industrial property rights, payments under management agreement, technical and service maintenance agreement,
- (e) Salaries, wages and other remunerations received by the nationals of one Contracting Party, who have obtained in the territory of the other Contracting Party the corresponding work permits relative to an investment,
- (f) Payments arising from a dispute relating to an investment.

2. Transfers shall be promptly effected in a convertible currency and at the official exchange rate prevailing on the date the transfer is made.

## **Article 9. Subrogation**

1. If an investment of an investor of one Contracting Party is insured against non-commercial risks under a system established by law, by an insurance company of that Contracting Party, any subrogation of the insurer which stems from the terms of the insurance agreement shall be recognized by the other Contracting Party.

2. Such insurer shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise.

3. Disputes between a Contracting Party and such an insurer shall be settled in accordance with the provisions of Article 11 of this Agreement.

## **Article 10. Observance of Commitments**

Either Contracting Party shall constantly guarantee the observance of the commitments it has entered into with respect to investments of investors of the other Contracting Party.

## **Article 11. Disputes between a Contracting Party and an Investor**

1. If any dispute arises between a Contracting Party and one or more investors relating to an investment(s), the Contracting Party and the investor (s) shall, in the first place, try to settle it by consultation and negotiation.

2. If the Contracting Party and the said Investor(s) can not reach an agreement within six months after written notification of settlement negotiations by one of the parties to the dispute, the latter shall, upon request of either Contracting Party, subject to its relevant laws and regulations, or the investor(s), be submitted to an arbitral tribunal of three members. Each of the Contracting Party and the investor(s) shall appoint one arbitrator, and these two arbitrators shall nominate a chairman.

3. Either of the Contracting Party or the investor(s) who initiate arbitration shall appoint its arbitrator in the Request for Arbitration. If the Contracting Party or the investor(s) does not appoint its arbitrator within 30 days from the receipt of the request for arbitration, the said arbitrator shall be appointed upon the request of the Contracting Party or the investor(s), as the case may be, by the Secretary General of the Permanent Court of Arbitration.

4. If the two arbitrators can not reach an agreement, within 60 days from the appointment of the second arbitrator, about the choice of the chairman, the latter shall be appointed upon request of either the Contracting Party or the investor(s) by the Secretary General of the Permanent Court of Arbitration.

5. The chairman of the arbitral tribunal shall always be a national of a third state having diplomatic relations with both Contracting Parties at the time of appointment.

6. The arbitration shall be conducted according to UNCITRAL Rules.
7. The place of arbitration shall be in Paris.
8. The decisions of the tribunal are final and binding upon the Contracting Party and the investor(s).

## **Article 12. Settlement of Disputes between the Contracting Parties**

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in first place try to settle it by consultation and negotiation.
2. If the Contracting Parties can not reach an agreement within twelve months after written notification of settlement negotiations by one of the parties to the dispute, the latter shall upon request of either Contracting Party, subject to its relevant laws and regulations, be submitted to an arbitral tribunal of three members. Each Contracting Parties shall appoint one arbitrator and these two arbitrators shall nominate a Chairman, who shall be a national of a third State, having diplomatic relations with both Contracting Parties at the time of nomination.
3. The Contracting Party who initiates the arbitration shall appoint its arbitrator in the Request for Arbitration. If the other Contracting Party does not appoint its arbitrator within 30 days from the receipt of the Request for Arbitration, the arbitrator shall be appointed upon request of the Contracting Party who has initiated the arbitration, by the President of the International Court of Justice.
4. If the two arbitrators cannot reach an agreement within 60 days from the appointment of the second arbitrator about the choice of the Chairman, the latter shall be appointed, upon request of either Contracting Party, by the President of International Court of Justice.
5. If in cases specified under paragraphs (3) and (4) of this Article, The President of the International Court of Justice is prevented from carrying out the said function, or if he is a national of either of the Contracting Parties the appointment shall be made by the Vice-President of the International Court of Justice and if the latter is prevented or if he is also a national of either Contracting Party, then the appointment shall be made by the eldest member of the International Court of Justice who is not a national of either Contracting Party.
6. Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure and the place of arbitration.
7. Each Contracting Party shall bear the costs of its own member of the tribunal or its representation in the Arbitral proceedings; the costs of the Chairman and remaining costs shall be borne by the Contracting Parties in equal parts. However, the tribunal may decide different proportions of costs to be borne by the two Contracting Parties. The tribunal shall determine its own procedure.
8. The decisions of the tribunal are final and binding on the Contracting Parties.

## **Article 13. Entry Into Force**

This agreement shall enter into force and be binding on the date of submission of the last instrument of ratification by one Contracting Party to the other Contracting Party.

## **Article 14. Amendments**

The amendments can be introduced to the present Agreement only with written agreement of the Contracting Parties. Such amendment shall come into force through the procedures as mentioned in the Article 13 of this Agreement.

## **Article 15. Duration and Termination**

1. This Agreement shall remain in force for a period of ten years and shall continue to stay in force unless terminated in accordance with paragraph 2 of this Article.
2. Either Contracting Party may, by giving one year written notice to the other Contracting Party, terminate this Agreement at the end of the initial ten-year period or at any time thereafter.
3. With respect to investments made or acquired prior to the date of termination of this Agreement, the provisions of all other Articles of this Agreement shall thereafter continue to be effective for a further period of ten years from such date of

termination.

In witness whereof, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at ..... this ..... day of 199\_ in Kazak,

Persian and English languages, all texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

For the Government of

For the Government of

#### PROTOCOL

On signing of the Agreement on reciprocal promotion and protection of investments between the Government of the Republic of Kazakhstan and the Government of the Islamic Republic of the Iran, the Contracting Parties also agreed on following provisions, which shall be considered as an integral part of the Agreement:

As far as the Islamic Republic of Iran is concerned, the term "investment", referred to in Article 1-1, as well as in the other Articles of the Agreement, refer exclusively to investments which are admitted and registred within the territory of the Islamic Republic of Iran in accordance with the Law and Regulations concerning the Attraction and Protection of Foreign Investments in Iran (L.A.P.F.I.) or laws and regulations which will succeed to L.A.P.F.I.

Admission and registration of investment(s) of the investors of the Republic of Kazakhstan in the territory of the Islamic Republic of Iran shall have to be evidenced by "Admission Certificate" - a specific document delivered by the Ministry of Economic Affairs and Finance, the Organization for Investment, Economic and Technical Assistance of Iran (O.I.E.T.A.I.) or their succesors-indicating, that the investment(s) have been approved under the laws and regulations of the Islamic Republic of Iran. The "Admission Certificate" may specify certain conditions under which the investment(s) has been invested. The competent authority in the Islamic Republic of Iran for issuance of the Admission Certificate is:

Organization for Investment, Economic and Technical Assistance of Iran (O.I.E.T.A.I.), its address being: 15th Khordad Square, Tehran, Iran.

Done in duplicate at Almaty this day of January 1996 in Kazak, Persian and English languages, all texts being equally aothentic. In case of divergence of interpretation the English text shall prevail.

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