Agreement between the Government of the Republic of Estonia and the Government of the Republic of Kazakhstan on encouragement and mutual protection of investments

Desiring to facilitate the expansion of economic cooperation between their States, with respect to investments made by investors of one Contracting Party in the territory of the other Contracting Party, between the Government of the Republic of Kazakhstan and the Government of the Republic of Estonia (hereinafter referred to as the Contracting Parties) ;

Recognizing that this Agreement, on which such investments are made, will stimulate the flow of equity and the economic development of the Contracting States;

Recognizing that sustainable investment conditions will be most effective for maximizing the use of livelihoods and living standards;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. "Investor" means in any of the Contracting Parties:

a) an individual who is a national of one of the Contracting Parties and makes investments in the territory of the other Contracting Party;

b) a legal entity created or registered in accordance with the laws of the state of that Contracting Party and who is the owner, owner or shareholder of the investment in the territory of the other Contracting Party.

2. For the Republic of Estonia, the term "investor" also means a legal entity of a Member State of the European Union or of the European Economic Area, which, in accordance with Articles 49 and 54 of the Treaty on the operation of the European Union, uses the freedom of establishment as an agency or permanent representation in the Republic of Estonia in the context of freedom of establishment.

3. The term "investments" means any type of assets invested by investors of one of the Contracting Parties in the territory of a state of the other Contracting Party, in accordance with the law of the last state, and in particular:

a) movable and immovable property, as well as mortgages, pledges, usufruct and similar rights as well as any other rights;

b) stocks, shares or other forms of participation in companies;

c) Invested income, bonds, monetary claims or any other rights to legal activity that have financial value in connection with the investment;

d) International Intellectual Property to the extent that it is a Member of the Contracting Parties, including copyright and related rights, industrial property rights, trademarks, patents, patents, industrial designs and technological processes, plant varieties, know-how, trade secrets, trademark rights and goodwill. intellectual property rights as defined in international agreements concluded within the framework of a property organization;

e) the right to carry out economic and commercial activity on the basis of the legislation of the states of the Contracting Parties.

Any change in the form in which the assets are invested or reinvested should not affect their nature as investments.

4. The term "income" means income derived from an investment and, in particular, profits, dividends, interest, patents and

other benefits.

5. "territory" means:

Concerning the Republic of Kazakhstan - the territory of the state within the land, sea and air borders, including land, water, subsoil and airspace, exercising the sovereignty of the Republic of Kazakhstan and distributing its legal competence in accordance with the norms of national and international law.

With regard to the Republic of Estonia, it means the territory and territorial sea of the Republic of Estonia, which exercises sovereign rights and legal jurisdiction under international law, as well as the maritime areas adjacent to the outer border of the territorial sea, the seabed and subsoil of any of the above territories of the Republic of Estonia. .

Article 2. Promotion of Investment

1. Each Contracting Party shall create favorable conditions for investors of the other Contracting Party to make investments in the territory of their State and allow such capital investments in accordance with the law of their State.

2. In order to encourage mutual investment flows, each Contracting Party in the territory of the other Contracting Party, at the request of one of the Contracting Parties shall make every effort to inform the investment opportunities.

3. Each Contracting Party shall, as appropriate, authorize, in accordance with the law of its States, the necessary permissions in connection with the operation of key personnel, including management and technical specialists, consultants and experts, employed by investors of the other Contracting Party.

Article 3. Protection of Investments

1. Each Contracting Party shall provide on its territory the full protection and security of the investments and income of investors of the other Contracting Party. No Contracting Party shall impede, by arbitrary or discriminatory measures, the development, management, storage, use, expansion, sale and liquidation of investments, if such liquidation takes place.

2. Investments or income of investors of one Contracting Party in the territory of the other Contracting Party shall be carried out in a fair and equitable manner in accordance with international law.

Article 4. National Treatment and Most Favored Nation Treatment

1. None of the Contracting Parties shall provide on its territory a less favorable regime for investments and investment income of investors of the other Contracting Party than that which it provides for investment and investment income of its investors or investment and investment income of investors of any third state, in depending on which regime is more favorable for the interested investors.

2. None of the Contracting Parties shall provide investors on the territory of the other Contracting Party with respect to the acquisition, development, management, storage, use, expansion, sale or other disposal of their investments a regime less favorable than that which provides its investors or investors with any third state, depending on which is more favorable for the interested investors.

3. None of the Contracting Parties on its territory shall establish mandatory investment measures for investors of the other Contracting Party in respect of the acquisition of materials, means of production, operation, transportation, sale of their products or similar orders with unreasonable or discriminatory consequences.

4. The provisions of paragraphs 1 and 2 of this article shall not be construed as obliging one of the Contracting Parties to extend to the investors of the other Contracting Party the benefits or privileges that may be granted by the first Contracting Party by virtue of:

a) any existing or future customs union or economic or monetary union, free trade area or similar international treaties to which one of the Contracting Parties is or may become a party to;

b) any international treaty relating in whole or in part to taxation.

Article 5. Expropriation

1. One Contracting Party shall not expropriate or nationalize directly or indirectly on its territory the investments of investors of the other Contracting Party or take any measures having a similar effect (hereinafter referred to as "expropriation"),

except for those taken:

a) in the public interest;

b) on a non-discriminatory basis;

c) In accordance with the due process of law;

d) with the payment of prompt, adequate and effective compensation.

2. Compensation should be the fair market value of the expropriated investment immediately before the expropriation or before the upcoming expropriation has become known, depending on what happened earlier. It should be paid without delay, implemented effectively and freely translated.

3. An investor of one of the Contracting Parties who has suffered as a result of the expropriation by the other Contracting Party shall have the right to an immediate review of his case, including the assessment of his investments and payment of compensation in accordance with the provisions of this article, a judicial authority or other competent and independent body of the latter Contracting Party.

Article 6. Compensation for Damage or Loss

1. In the event that investments made by investors of one of the Contracting Parties incur losses or damage as a result of war or other armed conflicts, civil unrest, a state of emergency, revolutions, riots or similar events in the territory of the other Contracting Party, in respect of restitution, compensation , of compensation or other forms of compensation, the host Contracting Party shall ensure a regime no less favorable than that provided by its own investors or investors any third state, depending on which regime is more favorable for investors.

2. Without prejudice to the provisions of paragraph 1 of this article, to investors of a Contracting Party who, in any cases referred to in paragraph 1 of this article, have suffered damage or loss in the territory of the other Contracting Party as a result of:

a) requisition of their property or its part by the authorities;

b) The destruction of their property or its part by authorities that were not caused as a result of hostilities and the need for a situation,

Will be promptly, adequately and effectively compensated for the loss or damage which was suffered during the seizure of their property or as a result of their destruction. Final payments must be made in freely convertible currency and are freely transferable without delay.

Article 7. Transfers

1. In accordance with the laws of their states, each of the Contracting Parties on its territory shall ensure the free transfer of payments related to investments of the other Contracting Party. Such transfers include, but are not limited to:

a) authorized capital and additional funds to maintain or increase investments;

b) income;

c) payments under the contract, including loan agreements;

d) Income from the sale or liquidation of all or any part of the investment;

d) payment of compensation in accordance with Articles 5 and 6 of this Agreement;

e) payments as a results of investment disputes;

g) earnings and other remuneration of personnel employed abroad in connection with investments..

2. Each Contracting Party shall ensure that transfers in accordance with paragraph 1 of this article are made in freely convertible currency at the market exchange rate at the date of transfer and must be made without delay.

3. The provisions of this article shall not be construed as preventing the Contracting Parties from conscientiously fulfilling their obligations as a member of the economic, customs and monetary union.

4. Notwithstanding the provisions of this article, any of the Contracting Parties may, in exceptional financial and economic circumstances, as well as in case of serious difficulties with the balance of payments, introduce currency restrictions in accordance with the laws of their state and with the requirements of the Articles of Agreement of the International Monetary Fund adopted on July 22 1944 at Bretton Woods.

Article 8. Subrogation

1. If the investments of investors of one Contracting Party made in the territory of the other Contracting Party are insured against non-commercial risks by the system established by the legislation of the latter, any subrogation of the insurer that arises from the terms of the insurance contract is recognized by the other Contracting Party.

2. The insurer is not entitled to exercise any other rights, except those to which the investor was entitled. Subrogation claim rights should not exceed the original rights of the investor.

Article 9. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. An investor in one Contracting Party who has a dispute with another Contracting Party should try to resolve it through negotiations and consultations.

2. In order to start the negotiation process, the investor must send a written notice to the Contracting Party. The notice should indicate:

a) the name and address of the disputing investor;

b) the provisions of this Agreement that were violated in the opinion of the investor;

c) the factual and legal grounds for the claim and

g) the requested funds and the amount of loss claimed.

3. If the dispute cannot be settled within six months from the receipt of the written notice, at the request of the investor, the dispute can be resolved:

a) by the competent court of the Contracting Party in whose territory the investment is made, or

b) The International Center for the Settlement of Investment Disputes (ICSID), established in accordance with the Convention on the Settlement of Investment Disputes between States and Citizens of Other States, open for signature in Washington March 18, 1965. In the event of a proceeding, each Contracting Party, under this Agreement, ultimately agrees to refer any such dispute to ICSID. This implies a waiver of the requirement that domestic administrative and judicial remedies be exhausted, or

c) by an arbitration composed of three arbitrators in accordance with the Arbitration Rules of the UN Commission on International Trade Law. In the event of arbitration, each Contracting Party, under this Agreement, gives an irrevocable consent in advance, even in the absence of a separate arbitration agreement between the Contracting Parties and the investor, to submit any such dispute to the said court.

4. The court decision is final and binding. Each Contracting Party shall ensure that the arbitral award is recognized and enforced in accordance with the laws of its states.

5. A Contracting Party that is a party to the dispute at any stage of the conciliation or arbitration proceedings or the execution of the arbitral award cannot object that the investor of the other Contracting Party that is a party to the dispute has received compensation by virtue of a guarantee in respect of all or part of its losses.

6. An investor who submits a dispute to a national court in accordance with subparagraph a) of paragraph 3 of this article or one of the arbitration courts referred to in subparagraphs b) and c) of paragraph 3 of this article shall not be entitled to submit it to any other court or arbitration. The choice of a court investor or court of arbitration is final and binding.

Article 10. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties regarding the interpretation or application of this Agreement shall be resolved as far as possible through negotiations and consultations.

2. If the dispute, in accordance with paragraph 1 of this article, cannot be settled within six months, then it shall, at the request of one of the Contracting Parties, be submitted to the arbitral tribunal, which consists of three members.

3. Each of the Contracting Parties shall appoint one member of the arbitration tribunal and these two members of the arbitration shall agree on a third-country national as chairman. Such members of the arbitration shall be appointed within two months from the date of notification of one Contracting Party by the other Contracting Party of their intention to refer the dispute to the arbitral tribunal, the chairman of which is appointed within the next two months.

4. If the time periods specified in paragraph 3 of this article are not met, one of the Contracting Parties may, without any other relevant agreements, contact the President of the International Court of Justice of the United Nations to make the necessary appointments. If the President of the International Court of Justice of the United Nations is a citizen of one of the Contracting Parties or for other reasons cannot perform the specified function, the Vice-President or in case of his inability, another next senior member of the International Court of Justice of the United Nations in accordance with the rules of the International Court of Justice of the United Nations may be invited to the same conditions for the necessary appointments.

5. The arbitral tribunal shall establish its own rules of procedure, unless the Contracting Parties decide otherwise.

6. The arbitral tribunal shall render its decision by virtue of this Agreement and in accordance with international law. It shall render his decision by a majority vote, and the decision shall be final and binding on the Contracting Parties..

7. Each Contracting Party shall bear the costs of its member of the arbitral tribunal and its legal representation in the arbitral proceedings. The expenses of the Chairperson and other expenses shall be borne equally by both Contracting Parties. The court may, however, in its decision determine a different distribution of costs.

Article 11. Application of the Agreement

This Agreement applies to investments made before or after the entry into force of this Agreement, but does not apply to any investment dispute that may arise before its entry into force.

Article 12. Entry Into Force, Duration and Termination of the Agreement

1. This Agreement shall enter into force on the date of receipt by diplomatic channels of the last written notice on the completion by the Contracting Parties of the domestic procedures necessary for its entry into force.

2. This Agreement shall be concluded for a period of ten years and shall be extended for subsequent ten-year periods until either of the Contracting Parties notifies the other Contracting Party in writing through diplomatic channels of its intention not to extend the validity of this Agreement no later than one year before the expiration initial or any subsequent periods.

3. With respect to investments made before the date of termination of this Agreement, the provisions of this Agreement will continue to be valid for ten years after the termination of its validity.

4. This Agreement may be terminated by written notification through diplomatic channels for six months if the obligations of the Republic of Estonia under this agreement exceed the obligations arising from its membership in the European Union, provided that the level of investment protection remains equal to the level stipulated by this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments of the undersigned have signed this Agreement.

Done at Tallinn on 20 April 2011 in duplicate, in the Estonian, Kazakh, Russian and English languages, all texts are being equally authentic. In a case of divergence of interpretation of the provisions of this Agreement, the English text shall prevail.

For the Government of the Republic of Estonia

Juhan Parts

For the Government of the Republic of Kazakhstan

Yerzhan Kazaykhanov