Agreement between the Government of the Kyrgyz Republic and the Government of the Republic of Armenia on Promotion and Mutual Protection of Capital Investments

The Government of the Kyrgyz Republic and the Government of the Republic of Armenia, hereinafter referred to as "Contracting Parties",

Desiring to promote, protect and create favorable conditions for investments of investors of one Contracting Party in the territory of the other Contracting Party,

Based on the principles of mutual respect for sovereignty, equality and mutual benefit, aimed at the development of economic cooperation between the two States

Have agreed as follows:

Article 1.

For the purposes of this Agreement:

1. The term "capital investment" means all types of property and non-property values that are invested in the territory of the Contracting Party receiving investments in accordance with its legislation, including, inter alia:

a) Movable and immovable property and property rights;

b) Shares or other forms of participation in enterprises and companies;

c) Claims to money and to any obligation, having an economic value;

d) Copyrights, industrial property rights, "know-how", and technology;

e) The rights to perform economic activities granted in accordance with the legislation of the Contracting Parties or agreements, including, in particular, the rights to exploration and exploitation of the natural resources.

2. The term "investor" in respect of each of the Contracting Parties means:

- Natural persons who are nationals of a Contracting Party according to its legislation;

- Enterprises, companies and other economic organizations established in accordance with the legislation in force in the territory of the Contracting Party, provided that natural persons, enterprises or companies, other economic organizations in accordance with the legislation of this Contracting Party are entitled to make capital investments in the territory of the other Contracting Party.

3. The term "returns" means amounts that result from investment, and in particular: profits, dividends, interest and license fees.

4. The term "territory" means:

The territory of the Republic of Armenia and the Kyrgyz Republic.

Article 2.

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory in accordance with its legislation.

2. Each Contracting Party shall in accordance with its legislation assist in obtaining visas and work permits in connection with

capital investments made in its territory by nationals of the other Contracting Party.

Article 3.

1. Each Contracting Party shall ensure treatment and protection in its territory for capital investments made by investors of the other Contracting Party and activities related to such capital investments equal to treatment and protection granted to its economic entities.

2. Treatment referred to in paragraph 1 of this Article shall be not less favorable than that provided to the capital investments made by investors of any third State and activities related to such capital investments.

3. Provisions of paragraphs 1 and 2 of this Article do not apply to benefits and preferences that the Contracting Party provides or shall provide in the future to the investors of any third State or their capital investments based on: its participation in a free trade zone, a customs or economic union, a mutual economic assistance organization, or an international treaty providing for benefits and preferences similar to those provided by the Contracting Party to members of these organizations and entered into force prior to the date of signing this Agreement; international treaties and other taxation related agreements; agreements on cross-border trade.

Article 4.

1. Capital investments made by the investors of either Contracting Party in the territory of the other Contracting Party cannot be nationalized, expropriated or exposed to any other similar measures that lead to consequences of nationalization or expropriation (hereinafter – "expropriation") except in cases, where such measures were taken in the public interests, while complying with the procedure established by the law.

2. Compensation provided for in paragraph 1 of this Article shall be calculated on the basis of the actual cost of the capital investment on the day preceding the adoption or publication of the decision on expropriation.

Compensation shall be paid without undue delay, be convertible and freely transferable from the territory of either Contracting Party to the territory of the other Contracting Party.

3. Where capital investment of the investors of either Contracting Party are caused damage in the territory of the other Contracting Party due to the war, state of emergency, civil unrest or other similar circumstances, the Contracting Party in whose territory the capital investment was made, should it take measures to compensate for the damage or other appropriate measures, shall provide these investors with treatment not less favorable than that provided to investors of any third State.

Article 5.

Where a Contracting Party provides a financial guarantee against non-commercial risks related to the capital investment made by its investor in the territory of the other Contracting Party, and makes payment under this guarantee, the other Contracting Party shall recognize transfer of the investor's rights to the former Contracting Party based on subrogation.

Article 6.

In accordance with its legislation each Contracting Party guarantees the investors of the other Contracting Party, after fulfillment of all tax obligations by them, transfer of the funds related to the capital investments, including:

a) Income as defined in paragraph 3 of Article 1 of this Agreement;

b) Funds from the full or partial liquidation of the capital investments;

c) Payments made under the loan agreement related to the investments;

d) Payments for technical assistance, maintenance and management experience;

e) Wages and other remuneration of nationals of the other Contracting Party for works and services performed in connection with the capital investments made in the territory of the former Contracting Party in the amount provided for by its legislation;

f) Other income received in accordance with the legislation of the Contracting Parties.

Article 7.

Funds specified in Articles 4 and 6 of this Agreement shall be transferred at the official exchange rate of the Contracting Party, in the territory of which the capital investment was made as of the date of transfer.

Article 8.

This Agreement shall apply to all capital investments made after the entry of this Agreement into force.

Article 9.

1. Where possible, all disputes between the Contracting Parties regarding the interpretation or application of this Agreement shall be settled through diplomatic channels.

2. If a dispute cannot be settled this way within six months from the date, when the dispute was raised by either Contracting Party, at the request of either Contracting Party it shall be submitted to the "ad hoc" Arbitral Tribunal.

3. The Arbitral Tribunal shall consist of three arbitrators and be created as follows: each Contracting Party shall appoint one arbitrator within 2 months from the date of receiving notification on submitting the dispute to arbitration by either Contracting Party. These two arbitrators shall within 2 months elect a third arbitrator – a national of a third State having diplomatic relations with both Contracting Parties, who with the consent of the Contracting Parties shall act as the Chairperson of the Arbitral Tribunal.

4. If the Arbitral Tribunal is not created within 4 months from the date of receiving a written notification on submitting the dispute to the Arbitral Tribunal, either Contracting Party may, unless otherwise agreed, request the President of the International Court of Justice to make necessary appointments. If the President is a national of either Contracting Party or for other reason cannot perform this function, the next in seniority member of the International Court of Justice, who is not a national of either Contracting Parties may be requested to make necessary appointments.

5. The Arbitral Tribunal shall independently establish the rules of procedure. The Arbitral Tribunal shall make decisions in accordance with the provisions of this Agreement and generally accepted principles of the international law.

6. The Arbitral Tribunal shall adopt the decisions by a majority vote; these decisions are final and binding on both Contracting Parties. At the request of either Contracting Party, the Arbitral Tribunal shall explain the reasons for its decision.

7. Each Contracting Party shall bear costs related to activities of the arbitrator appointed by it and its representation in the arbitration proceedings. Costs related to activities of the Chairperson and other expenses shall be borne by the Contracting Parties in equal portions.

Article 10.

1. Any dispute between one Contracting Party and the investor of the other Contracting Party concerning the amount of compensation in case of expropriation can be referred to arbitration.

2. Such an Arbitral Tribunal shall be created for each specific case as follows: each party to the dispute shall appoint one arbitrator, and these two arbitrators shall elect a national of a third State having diplomatic relations with both Contracting Parties as the arbitrator – Chairperson. The first two arbitrators shall be appointed within 2 months, and the Chairperson shall be elected within 4 months from the date of the written notification on submitting the dispute to arbitration. If the Arbitral Tribunal is not created within specified period, either party to the dispute may propose that necessary appointments are made by the President of the Arbitration Institute of the Stockholm Chamber of Commerce.

3. The Arbitral Tribunal shall independently establish the rules of procedure. At the same time, in the course of determining the procedure it may adopt the Rules of Arbitration of the Institute of the Stockholm Chamber of Commerce as a guide.

4. The Arbitral Tribunal shall adopt its decisions by a majority vote. This decision shall be final and binding on both parties to the dispute. Each Contracting Party is obliged to implement the decision of the Arbitral Tribunal in accordance with its national legislation.

5. The Arbitral Tribunal shall adopt its decisions in accordance with the provisions of this Agreement, the laws of the Contracting Party, in territory of which capital investments are made, including its conflict rules, as well as generally accepted principles of international law.

6. Each party to the dispute shall bear costs related to activities of the arbitrator appointed by it and its representation in the arbitration proceedings. Costs related to activities of the Chairperson and other expenses shall be borne by the Contracting Parties in equal portions.

Article 11.

If either Contracting Party, in accordance with its legislation or international treaty, which both Contracting Parties are parties to, provides capital investment of the investors of the other Contracting Party or activity related to such capital investment with the treatment more favorable than that provided by this Agreement, a more favorable treatment shall apply.

1. Representatives of both Contracting Parties shall, as necessary, meet to:

a) Explore the issues related to application of this Agreement;

b) Exchange information on capital investment related legal issues and on the possibility of investing;

c) Resolve disputes arising in connection with the capital investments;

d) Explore other issues related to capital investments;

e) Consider proposals on possible amendments and additions to this Agreement.

2. If either Contracting Party proposes to hold consultations on any issue provided for in paragraph 1 of this Article, the other Contracting Party shall immediately respond and consultations shall be held alternately in Bishkek and Yerevan.

Article 12.

1. This Agreement shall enter into force 30 days after notifying each other by the Contracting Parties in writing that they have implemented respective constitutional procedures, and shall be valid for 15 years.

2. This Agreement shall remain in force, if none of the Contracting Parties notifies the other Contracting Party in writing of its termination at least one year prior to expiration of the period specified in the paragraph 1 of this Article.

3. Following expiration of the initial fifteen-year term, each Contracting Party may at any time terminate this Agreement by notifying in writing of its intention to the other Contracting Party.

4. In respect of capital investments made prior to the date of termination of this Agreement, the provisions of Articles 1-12 shall remain in force for subsequent 15 years calculated from the date of termination of this Agreement.

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

Done in Yerevan on 4 July 1994 in two original copies, each in the Kyrgyz, Armenian and Russian languages, with all versions having equal force.

For the Government of the Kyrgyz Republic - A. Djumagulov

For the Government of the Republic of Armenia - G. Bagratyan