

# Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Poland on Encouragement and Mutual Protection of Investments

The Government of the Republic of Poland and the Government of the Republic of Kazakhstan, hereinafter referred to as "the Contracting Parties",

Striving to strengthen and extend economic cooperation between the two Contracting Parties,

Striving to create favorable conditions for investors to invest in one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and mutual protection of foreign investment in accordance with the provisions of this Agreement will promote the economic development of the Contracting Parties,

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means all kinds of property and includes in particular but not exclusively:

- Movable and immovable property, and any other property rights thereon, including pledges, retention, mortgage, warehousing and funds on bank accounts and other financial institutions;
- Shares, shares, bonds or any other type of shareholdings in companies, stock exchanges, business organizations, unions and other legal entities registered in accordance with the legislation of the Contracting Parties;
- Loans, loans, bank and financial contributions and other cash claims related to the investment made;
- Intellectual and industrial property rights, including copyrights, patents, trademarks, utility models, trade names, industrial designs, projects, business secrets and know-how;
- Organization of production and principles of production management;
- Reinvest income and repay debt and interest under credit agreements.

2. The term "Investor" means:

- a) An individual who is a citizen of one of the Contracting Parties in accordance with the legislation in force;
- b) A legal entity established in accordance with the current legislation of one of the Contracting Parties;
- c) A legal entity not established in accordance with the legislation of one of the Contracting Parties, but directly or indirectly controlled by natural or legal persons of the same Contracting Party, which in its activities will be subject to the provisions of this bilateral Agreement.

3. The term "Income" means:

Funds received as a result of investment or associated with them, in cash or in kind, including profits, dividends, remuneration for the management of the enterprise, maintenance and any other legal income.

4. A change in the form of an investment permitted in accordance with the legislation and other regulatory acts of the State of the Contracting Party in whose territory the investment was made does not change its nature as an investment.

## **Article 2. Promotion and Admission of Investment**

1. Each Contracting Party will support investments by natural and legal persons of the other Contracting Party and will authorize such investments in accordance with its legislation.
2. Each Contracting Party shall ensure fair and equal treatment of investments made by natural and legal persons of the other Contracting Party and shall not apply arbitrary or discriminatory measures in respect of the management and operation, enjoyment or disposal of such investments.

## **Article 3. Protection and Treatment of Investment**

1. Each Contracting Party shall ensure that investments in its territory are treated no less favorably than those granted by it to its own natural and legal persons or to investments made by natural or legal persons of a third country.
2. This treatment will not apply:
  - a) To the privileges which one of the Contracting Parties grants to natural or legal persons of other States in connection with joint membership of a customs union or a free trade union;
  - b) To the privileges which a Contracting Party grants to natural or legal persons of other States under a double taxation agreement or other taxation agreement.

## **Article 4. Expropriation**

Investments by investors of one of the Contracting Parties may not be requisitioned, nationalized, expropriated or otherwise subject to similar effects as a result of requisition, nationalization, expropriation (hereinafter referred to as expropriation), except when the expropriation is taken for public purposes. Made in a non-discriminatory manner and for prompt payment of adequate compensation. The compensation should correspond to the market value of the expropriated investment before the expropriation or before the expropriation decision becomes publicly known, whichever is the earlier.

Compensation should cover interest corresponding to the applicable interest rate and calculated for the period between the date referred to above in this article of this agreement and the date of payment of the compensation. The compensation is paid in the currency in which the investment was made, or, in consultation with the investor, in another currency. Compensation is subject to transfer without restriction and without undue delay.

## **Article 5.**

Investors of one of the Contracting Parties whose investments in the territory of the other Contracting Party suffer losses due to war or other armed conflict, exceptional state, riots or similar events shall be treated by the other Party no less favorably than its own natural and legal persons as regards Compensation for losses incurred by them as a result of the abovementioned circumstances. Amounts of compensation are freely transferable abroad.

## **Article 6. Transfer of Payments Related to Investments**

1. The Contracting Parties shall guarantee the free and unreasonable delay of the transfer of investment-related assets in accordance with the procedure laid down in the legislation of a Contracting Party which may determine:
  - The formal rules for making such transfers, taking into account the requirement that such rules do not infringe the transfer right itself;
  - Protecting the rights of creditors or securing enforcement of court decisions taken in court proceedings;

## **Article 7. More Favorable Treatment Clause**

Where the legislation or other legislation of a Contracting Party or existing obligations between the Contracting Parties in accordance with international law contains additional regulations which, in general or in detail, provide for investments made by investors of the other Contracting Party to treatment more favorable than provided for in this Agreement. Such regulations, to the extent that they are more favorable, shall take precedence over this Agreement.

## **Article 8. Subrogation**

1. If a Contracting Party or any of its agencies make a payment to any of its investors under a guarantee or insurance concluded in connection with an investment, the other Contracting Party shall consider the transfer of all rights or claims of the investor by the first Contracting Party or its agency. A Contracting Party or any of its agencies that has taken over the investor's rights is entitled to the same rights as the investor and to enforce such rights to the same extent, subject to the investor's obligations with respect to the person thus insured.

2. In the case of the subrogation referred to in paragraph 1 of this Article, the investor shall not make claims unless it is authorized by the Contracting Party or any of its agencies. Paragraph 1 of this Article, the investor shall not make claims unless authorized by the Contracting Party or this Article. Contracting Party or any agency thereof.

## **Article 9. Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation and application of the provisions of this Agreement shall be settled by diplomatic means.

2. If both Contracting Parties fail to reach an agreement within six months of the date of the dispute, the dispute shall be submitted to the arbitral tribunal of three members at the request of any Contracting Party. Each Contracting Party will designate one arbitrator, and the elected arbitrators shall nominate a chairman who will be a national of a non-Contracting Party with diplomatic relations with both Contracting Parties.

3. If one of the Contracting Parties fails to elect its arbitrator and does not join the other Contracting Party to make such a selection within two months, the arbitrator shall be appointed by the President of the International Court of Justice in The Hague at the request of that Contracting Party.

4. If both arbitrators can not reach agreement on the election of the chairman within two months of their appointment, they will be appointed by the Vice-President of the International Court of Justice at the request of either Contracting Party.

5. If, in the cases referred to in paragraphs 3 and 4 of this Article, the Vice-President of the International Court of Justice fails to fulfill the said function or if he is a national of one of the Contracting Parties, the senior judge of the Court who is not a national of either Contracting Party shall be appointed. In paragraphs 3 and 4 of this Article, the Vice-President of the International Court of Justice can not fulfill that function or, if he is a national of one of the Contracting Parties, the senior judge of the Court who is not a national of neither of the Contracting Parties.

6 Without prejudice to other provisions between the Contracting Parties, the tribunal shall determine its procedure. The Court shall rule by a majority of votes.

7 Each Contracting Party shall bear the costs of its own arbitrator and of its participation in the arbitration proceedings; The costs of the chairman and the remaining costs shall equally cover the Contracting Parties. However, the Court may, in its judgment, determine a greater share of the costs of one Contracting Party and such determination shall be binding on both Contracting Parties.

8 Judgments of the tribunal are final and binding on each of the Contracting Parties.

## **Article 10. Disputes between the Contracting Party and the Investor of the other Contracting Party**

1. In order to resolve the dispute between the Contracting Party and the investor of the State of the other Contracting Party, consultations will be held between the parties concerned.

2. If consultation fails to resolve within six months of the date of the written request for initiation of a consultation, the parties to the dispute may proceed as follows:

a) If the dispute concerns the obligations of Articles 4, 5 and 6 of this Agreement, it will be forwarded to the arbitral tribunal, Articles 4, 5 and 6 of this Agreement, at the request of the investor, and will be forwarded to the arbitral tribunal at the request of the investor.

b) A dispute not referred to in paragraph 2 (a) of this article shall be referred to the arbitration tribunal.

3. The arbitral tribunal will be set up for each individual case. Unless the parties to the dispute agree otherwise, each of them will appoint one arbitrator. Appointed arbitrators will elect a president who will be a third-country national. Arbitrators should be appointed within two months from the date of receipt of the request for referral to the arbitral tribunal and the chairman within the next two months.

4. If the terms mentioned in paragraph 3 of this article are not respected, any of the parties to the dispute may, in the absence of any other agreement, request the President of the Court of Arbitration at the International Chamber of Commerce in Paris to make the necessary appointments. If the President is unable to perform the said function or is a national of a Contracting Party, the provisions of Article 9, paragraph 5, of this Agreement shall apply mutatis mutandis. Article 3 of this Article shall not be respected, any of the parties to the dispute may, in the absence of any other agreement, request the President The Court of Arbitration at the International Chamber of Commerce in Paris to make the necessary appointments. If the President can not perform the said function or is a national of a Contracting Party, the provisions of Article 9, paragraph 5, of this Agreement shall apply mutatis mutandis.
5. Unless the parties to the dispute agree otherwise, the tribunal will determine its course of action. Decisions are final and binding. Each Contracting Party shall ensure the recognition and enforcement of arbitration awards.
6. Each party to the dispute will bear the costs of its member of the Tribunal and its own participation in the arbitration proceedings; The costs of the chairman and other costs will be borne equally by the parties to the dispute. However, the tribunal may, in its ruling, decide on a different proportion of the costs borne by one party and that decision will be binding on both parties.
7. A Contracting Party which is a party to a dispute may not, at any stage of the amicable settlement or enforcement of the judgment, rely on the fact that the investor has received compensation as a result of the insurance contract covering all or part of the damage suffered.
8. Where both Contracting Parties become parties to the Convention of 18 March 1965 on Settlement of Investment Disputes between States and Nationals of Other States, disputes shall be submitted to the International Center for Settlement of Disputes as follows: The disputes referred to in paragraph 2 (a) of this Article at the request of the investor, and the disputes listed in paragraph 2 (b) of this article, with the consent of both parties. (A) of this Article, at the request of the investor and the disputes referred to in paragraph 2 (b) of this article, with the consent of both parties.

## **Article 11. Final Provisions**

1. The Contracting Parties shall exchange notes on the fulfillment of the legal requirements provided for in the legislation of the State of each of the Contracting Parties with regard to the entry into force of international agreements. This agreement will enter into force on the day of receiving the later note.
2. This Agreement shall remain in force for a period of ten years and shall remain in force until terminated as long as it is terminated in accordance with the provisions of paragraph 5 of this Article.
3. The provisions of this Agreement after its entry into force will cover investments made from 16 December 1991.
4. With respect to investments made before the expiration of this Agreement, the provisions of all previous Articles thereof shall remain in force for a further period of ten years from the date of its expiry.
5. Each Contracting Party may, in writing, terminate the agreement in writing one year prior to the expiry of its first ten years, or at any time thereafter.

In witness whereof the undersigned, duly authorized, have signed this Agreement.

In the event of divergences in interpretation of the terms of the contract, the Contracting Parties will regard the Russian text as meaningful.

Under the authority of the Government

Polish Republic

W. Pawlak

Under the authority of the Government

Republic of Kazakhstan

I. Tereshchenko