

# **AGREEMENT FOR THE PROMOTION AND PROTECTION OF INVESTMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA AND THE GOVERNMENT OF THE KYRGYZ REPUBLIC**

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

Recalling that foreign direct investment is a vital complement to national and international development efforts;

Recognizing that the Agreement on the treatment to be provided to investors and their investments will facilitate the efficient use of economic resources, create employment opportunities and improve well-being;

Emphasizing that a fair, transparent and predictable investment regime based on law complements and contributes to the improvement of the world trading system;

Wishing to strengthen friendly relations and stimulate the development of economic cooperation between them with regard to investments by individuals and legal entities of one Contracting Party in the territory of the State of the other Contracting Party;

Reaffirming the commitment to create appropriate conditions at the national and international levels conducive to achieving full and productive employment and decent work for all, and its impact on sustainable development;

Recalling international obligations relating to the observance of human rights in accordance with Article 2 of the Partnership and Cooperation Agreement between the European Communities and their member States, on the one hand, and the Kyrgyz Republic, on the other hand, signed on 9 February 1995 in the city of Brussels;

Recognizing that investment as an engine of economic growth can play a key role in establishing stable economic growth;

Agreeing that these goals can be achieved without prejudice to health, to measures of general security and the environment;

Recognizing that the development of economic and business relations can ensure compliance with internationally recognized norms of labor law;

Expressing confidence that responsible corporate behavior can promote mutual trust between enterprises and host countries;

Emphasizing that all governments and the civil sector need to adhere to the anti-corruption measures of the United Nations, especially the UN Convention against Corruption (2003);

Have agreed as follows:

## **Chapter 1. General Provisions**

### **Article 1. Definitions**

For the purposes of this Agreement:

1) "Investor of a Contracting Party" means:

A) an individual who is a citizen of the State of the Contracting Party in accordance with his national law, but on condition that a natural person with dual nationality is considered to be exclusively a citizen of that State where his nationality is predominant and valid; or

B) an enterprise established in accordance with the national legislation of the state of the Contracting Party that carries out or has made investments in the territory of the state of the other Contracting Party.

2) "Investing by an investor of a Contracting Party" means any type of investment in the territory of a State of one Contracting Party owned or controlled, directly or indirectly, by an investor of the other Contracting Party. Investments involve the presence of specific characteristics, such as the transfer of capital or other resources, or the expectation of profit, or awareness of risk, and includes:

A) an enterprise as defined in paragraph (3) of this article;

B) shares, securities and other forms of equity participation in the enterprise, as defined in subparagraph (a) of this paragraph, and the rights thereunder;

C) debt obligations, bonds, loans and other forms of debt obligations and rights arising thereafter;

D) any right or claim for money or action in accordance with national law or contract, including the operation, construction, management or contracts for the distribution of income, as well as concessions, licenses, permits for the conduct of economic activities;

E) intellectual property rights and intangible forms of property that have economic value, including the right to industrial property, copyright, trademark, product design; patents, geographical indications, industrial designs and technical processes, trade secrets, product names, know-how and goodwill;

F) any other forms of tangible or intangible property, movable or immovable property or related property rights, such as letting, mortgage, mortgage, security right, usufruct.

3) "Enterprise" means any legal entity or organization established or founded in accordance with the national law of the State of the Contracting Party for the purpose of obtaining or not receiving profits subject to private or public control, for example a corporation, a company, a joint venture or any other entity such as a trust, an individual private enterprise, a branch located in the territory of the state of a Contracting Party and carrying out an independent entrepreneurial activity u activity.

4) "Revenues" means amounts received from investment and, in particular, profit, interest, capital gains, dividends, fees, royalties, management fees, technical assistance payments and other forms of payment.

5) "Immediate" means the period of time necessary to perform all required procedures for payment of compensation or transfer of payments. This period should begin to pay compensation on the day of expropriation, and for the transfer of payments - on the day when the transfer request was submitted. In any case, this period should not exceed one (1) month.

6) "Territory" with respect to the State of each Contracting Party means land territory, inland waters, sea and air space under its jurisdiction, including the special economic zone and the continental shelf, which are subject to the jurisdiction of the State of the Contracting Party, in accordance with international rights.

7) "Measures" means regulatory actions and include laws, regulations, decisions, procedures, requirements or practices.

8) "National law" means the legislation of the State of a Contracting Party which, in the case of the Republic of Austria, is in force in the territory of the States of the Contracting Parties, the relevant legislation of the European Union.

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

### **Agreement on the Promotion and Protection of Investments**

1) Each Contracting Party, in accordance with the national legislation of its State, shall encourage and accept investments of investors of the other Contracting Party.

2) Any change in the form of investment or reinvestment should not affect their nature as an investment, provided that this change is in accordance with the national legislation of the state of the Contracting Party in whose territory the investments are made.

## **Article 3. Treatment of Investments**

1) Each Contracting Party shall ensure a fair and equitable treatment of investments of investors of the other Contracting Party, and shall guarantee full and permanent protection and security.

2) A Contracting Party shall not unduly or discriminatory impair the management, operation, maintenance, use, enjoyment, sale and liquidation of an investment by investors of the other Contracting Party.

3) Each Contracting Party shall provide investors of the other Contracting Party and their investments or revenues with a treatment no less favorable than that accorded to its own investors and their investments or investors and investments or to the income of a third country in the management, operation, maintenance, use, possession, The realization or liquidation of their investments or revenues, regardless of which of them is more favorable to the investor.

4) None of the provisions of this Agreement shall be construed as:

A) an obstacle to the Contracting Party to take any action to fulfill its obligations under the UN Charter for the maintenance of international peace and security;

B) an obstacle to the Contracting Party in fulfilling its obligations as a party to economic integration agreements, such as: the free trade area, the Customs Union, the common market, the Economic Community, the monetary union, for example, the European Union; or

C) as an obligation of the Contracting Party to extend to investors of the other Contracting Party or their investments or revenues, present or future benefits from the regime, preferences or privileges on the basis of its participation in such an agreement or any other multilateral investment agreement; or

D) as an obligation of the Contracting Party to extend to investors of the other Contracting Party or to their investments and revenues, present or future advantages of the regime, preferences or privileges arising from the obligations of the Contracting Party under an international agreement, international arrangement or national legislation of its state with respect to taxation.

## **Article 4. Investment and the Environment**

The Contracting Parties recognize the unacceptability of encouraging investment by weakening national environmental legislation.

## **Article 5. Investments and Labour**

1) The Contracting Parties recognize the unacceptability of encouraging investment at the expense of the national labor legislation of the States of the Contracting Parties.

2) For the purposes of this Article, "labour legislation" means a law or a normative legal act of the States of the Contracting Parties directly related to the following internationally recognized labor rights:

A) the right to association;

B) the right to joint organization and negotiations;

C) a ban on the use of any form of forced or forced labor;

D) protection of the labor rights of children and young people, including the minimum age for employment of children, as well as the prohibition and elimination of the worst forms of child labor;

E) acceptable working conditions with respect to minimum wages, working hours, occupational safety and health;

(F) Elimination of discrimination in employment and employment.

## **Article 6. Transparency**

1) Each Contracting Party shall publish in a timely manner or provide open access to its laws, regulations, procedures, as well as to international agreements that may affect the operation of this Agreement.

2) Each Contracting Party shall promptly respond to specific questions and provide, upon request, information to the other Contracting Party on any measures and matters specified in paragraph (1) of this article.

3) None of the Contracting Parties is obliged to respond to a request for information or to provide access to information relating to individual investors or investments, the disclosure of which interferes with the enforcement of the national legislation of their state or is contrary to laws and regulations protecting privacy.

## **Article 7. Expropriation and Compensation**

1) The Contracting Parties shall not expropriate or nationalize, directly or indirectly, the investments of an investor of the other Contracting Party or take any other measures having an equivalent effect (hereinafter referred to as expropriation), with the exception of:

A) for the public interest;

B) on a non-discriminatory basis;

C) in accordance with the established legal procedure;

D) accompanied by prompt payment of appropriate and real compensation in accordance with the following paragraphs (2) and (3) of this article.

2) Payment must:

A) be paid promptly. In cases of delay, any foreign exchange losses arising from this delay should be reimbursed by the host country;

B) be equivalent to the fair market value of the withdrawn investment before the withdrawal occurred. Fair market value should not reflect any changes in the value arising from earlier public awareness of the expropriation that has occurred;

C) be paid and freely transferred to the country indicated by the claimant in the currency of the country of nationality of the claimant or in any other freely convertible currency acceptable to the claimant;

D) include interest at a commercial rate established on the basis of a market rate, such as LIBOR or EURIBOR, for the currency of payment from the date of expropriation to the settlement of the payment.

3) An investor of a Contracting Party that is subject to expropriation by the state of the other Contracting Party must have the right to an expeditious review of the case, including an assessment of its investment and payment of compensation in accordance with the terms of this article, by the justice authority or other competent and independent body of the State of the latter Contracting Party.

(4) Non-discriminatory measures of a Contracting Party that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute indirect expropriation, except in rare circumstances, such as when a measure or series of measures are so severe in the light of their purpose that they cannot be reasonably viewed as having been adopted and applied in good faith.

## **Article 8. Compensation for Losses**

1) An investor of a Contracting Party that has suffered losses in respect of its investments in the territory of the other Contracting Party due to war or other armed conflicts, a state of emergency in the country, revolution, insurrection, social unrest or other similar events or force majeure in the territory of the latter Contracting Party. The parties must be granted by the latter Contracting Party a regime with respect to restitution, compensation, compensation no less favorable than that given to domestic investors or investors of a third State, depending on what the investor will prefer.

2) An investor of a Contracting Party that has suffered losses from any of the cases specified in paragraph (1) of this article, due to:

A) confiscation of investments or their part by the authorities or power agencies operating in the territory of the other Contracting Party, or

B) the destruction of investments or their part by the authorities or the law enforcement agencies of the state of the other Contracting Party, not caused by the need for the situation, in any case, immediate, proper and real compensation or compensation for the damage caused by the State of the latter Contracting Party in accordance with paragraphs 2) and (3) of Article 7 of this Agreement.

## **Article 9. Transfers**

1) Each Contracting Party shall guarantee the free and prompt transfer of all payments related to the investment of an investor of the other Contracting Party from the territory and to the territory of its state. The above transfers include, in particular:

- A) initial capital and additional funds to maintain or increase investment;
- B) income;
- C) payments under the contract, including the loan agreement;
- D) proceeds from the sale and liquidation of the entire amount or any part of the investment;
- E) payment of compensation in accordance with Articles 7 and 8 of this Agreement;
- F) payments arising in the settlement of disputes;
- G) wages and other remuneration of employees hired from abroad in connection with investment.

2) Each Contracting Party shall further guarantee that such transfers shall be made in freely convertible currency at the market exchange rate in effect at the date of transfer to the territory of the Contracting Party from which the transfer takes place. Banking costs should be objective and fair.

3) In the absence of a market quotation for a foreign currency, the current exchange rate for the conversion of currencies into Special Drawing Rights is used.

(4) Notwithstanding paragraphs (1) to (3) and without prejudice to measures adopted by a Contracting Party in pursuance of its international obligations as mentioned in Article 3(4), a Contracting Party may also prevent a transfer through the equitable, non-discriminatory and good faith application of laws and regulations on bankruptcy, insolvency or the protection of rights of creditors, on the issuing, trading and dealing in securities, futures, options and derivatives, on reports or records of transfer, on the prevention of money laundering or terrorist financing, or in connection with criminal offences and orders or judgements in administrative and adjudicatory proceedings, provided that such measures and their application shall not be used as a means of avoiding the Contracting Party's commitments or obligations under this Agreement.

## **Article 10. Subrogation**

If the Contracting Party or its designated agency pays compensation, guarantees or provides insurance for investor investments in the territory of the other Contracting Party, the latter Contracting Party shall recognize, without questioning, the rights of the investor in accordance with Part 1 of Chapter 2 of this Agreement to transfer rights or requirements of this investor to the first Contracting Party or its designated agency, as well as the law of the first Contracting Party or its designated agency and To use subrogation any such right or make a claim to the extent that its predecessor.

## **Article 11. Other Obligations**

1) Each Contracting Party shall comply with all obligations undertaken with respect to specific investments of investors of the other Contracting Party. This means that a breach of contract between the investor and the host country or one of its points will violate the entire present Agreement.

2) If the laws of a State of either Contracting Party or current obligations under international law or obligations hereinafter established between the Contracting Parties in addition to this Agreement contain rules that are general or specific, allowing investments by natural and legal persons of the State of the other Contracting Party Parties to grant a regime more favorable than provided for in this Agreement, such rules should, to the extent that they are more lagopriyatnymi, have an advantage over this Agreement.

## **Article 12. Denial of Benefits**

A Contracting Party may deny the benefits provided under this Agreement to an investor of the other Contracting Party and its investments if the investor of a third-party state owns or controls the first mentioned investor and if this investor does not carry out any business in the territory of the state of the Contracting Party, According to the national legislation of which the investor's enterprise was established or organized.

# **Chapter 2. Settlement of Disputes**

## **Part 1. Settlement of Disputes between an Investor and a Contracting Party**

## **Article 13. Overview and Actions**

This Article shall apply to disputes between a Contracting Party and an investor of the other Contracting Party in respect of alleged breaches of obligations of the first Contracting Party under this Agreement, which may result in loss or damage to the investor or his investments.

## **Article 14. Means of Settlement, Time Periods**

1) Disputes between the Contracting Party and the investor of the other Contracting Party should, as far as possible, be settled through negotiations or consultations. If the dispute is not resolved in this way, the investor can apply:

A) to the competent judicial authority or arbitration of the State of the Contracting Party which is a party to the dispute;

B) in accordance with any earlier agreed dispute settlement procedure; or

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C) in accordance with this article to:

(i) The International Centre for Settlement of Investment Disputes ("the Centre"), established pursuant to the Convention of the Settlement of Investment Disputes between States and Nationals of other States, signed in Washington on 18 March 1965 ("the ICSID Convention"), if the Contracting Party of the investor and the Contracting Party, party to the dispute, are both parties to the ICSID Convention;

(ii) The Centre under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre, if the Contracting Party of the investor or the Contracting Party, party to the dispute, but not both, is a party to the ICSID Convention;

(iii) To the sole arbitrator or to provisional arbitration established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);

(iv) To the International Chamber of Commerce, to the sole arbitrator or to provisional arbitration in accordance with the rules of arbitration.

2) A dispute may be submitted pursuant to paragraph 1 (c) of this Article after the expiration of sixty (60) days from the receipt of the notification of the intention of the Contracting Party which is the party to the dispute for the action, but no later than 5 years from the date when the investor The first time he received or was to receive notification of the events that led to the dispute.

3) The arbitral tribunal established in accordance with paragraph 1 (c) of this article shall apply the UNCITRAL Transparency Rules.

## **Article 15. Contracting Party Consent**

1) Each Contracting Party hereby gives its unconditional consent to submit the dispute for consideration to an international arbitration court in accordance with this part. However, the dispute is not subject to transfer to international arbitration if the court of first instance in any of the Contracting Parties has rendered the final decision on the merits.

(2) The consent specified in paragraph (1) of this article means the waiver of the requirements that internal administrative or judicial remedies must be exhausted.

## **Article 16. Place of Arbitration**

Any arbitration court under this part of this Agreement shall, at the request of any party to the dispute, be held in the territory of a State party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed in New York on 10 June 1958. Applications submitted to the arbitral tribunal under this article shall be considered as a result of commercial relations or transactions for the purposes of Article 1 of the New York Convention.

## **Article 17. Indemnifications**

The Contracting Party shall not, as a defense of its rights, present a counterclaim, the right to compensation or for any other reason, in order to obtain damages or compensation for all the alleged damage or part thereof, in accordance with the

contract for damages, guarantees or insurance.

## **Article 18. Applicable Law**

1) The arbitration established under this part of this Agreement shall settle disputes in accordance with this Agreement and the applicable rules and principles of international law.

2) Controversial issues within the framework of Article 11 of this Agreement shall be resolved, in the absence of another agreement, in accordance with the national legislation of the State of the Contracting Party that is a party to the dispute,

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Regulating permission and consent, as well as similar rules of international law that can be applied.

## **Article 19. Awards and Enforcements**

1) Arbitral awards that may include a decision to pay interest shall be final for both parties to the dispute and may provide the following forms of legal protection:

A) a statement that the Contracting Party has not fulfilled its obligations under this Agreement;

B) financial compensation, which should include interest from the time of damage to the time of payment;

C) restitution in this way in appropriate cases where the Contracting Party can pay financial compensation in cases where restitution is not applicable; and

D) with the consent of the parties to the dispute, any other form of legal protection.

2) Each Contracting Party shall take measures to effectively implement the decisions adopted pursuant to this article and to implement promptly any such decision taken in the proceedings to which it is a party.

# **Part 2. Settlement of Disputes between Contracting Parties**

## **Article 20. Scope, Consultation, Mediation and Conciliation**

Disputes between the Contracting Parties regarding the interpretation or application of this Agreement shall be settled as far as possible in a friendly manner or through consultations, mediation or agreement.

## **Article 21. Initiation of Proceedings**

1) Upon the request of any of the Contracting Parties, a dispute concerning the interpretation or application of this Agreement may be referred to the arbitral tribunal not earlier than sixty (60) days after the notification of the other Contracting Party of such an intention.

2) A Contracting Party may not initiate proceedings under this Part in respect of a dispute involving an infringement of the rights of an investor that this investor has submitted to the arbitral tribunal pursuant to subsection (1) of this Agreement, except if the other Contracting Party has failed to comply with and Execute the decision of the arbitration court rendered in this dispute or those proceedings ended without the arbitration court's resolution of the investor's claim.

## **Article 22. Formation of the Tribunal**

1) The arbitral tribunal shall be established in a particular case in accordance with the following procedure:

Each Contracting Party must appoint one member, who in turn must agree on a third-country national as their chairman. These members shall be appointed within two (2) months from the date of informing one Contracting Party of the other Contracting Party of their intention to submit the dispute for arbitration, the chairman of which shall be appointed within two (2) subsequent months.

(2) If the time limits specified in paragraph (1) of this article are not met, any Contracting Party may, in the absence of another appropriate agreement, invite the President of the International Court of Justice to make the necessary

appointments. In the event that the President of the International Court of Justice is a national of one of the States of the Contracting Parties, or if it is otherwise exempt from the above-mentioned function, the Vice-President or, in the event of his inability, the next-highest-ranking member of the International Court of Justice shall be invited on the same conditions to make the necessary appointments.

3) The members of the arbitral tribunal must be independent and impartial.

## **Article 23. Applicable Law, Default Rules**

1) The Arbitral Tribunal shall settle disputes in accordance with this Agreement and the applicable rules and principles of international law.

2) In case the Parties to the dispute have not agreed otherwise, the Optional Rules for the Arbitration of Disputes of the Permanent Court of Arbitration shall apply to issues that are not regulated by other provisions of this Part.

## **Article 24. Awards**

1) The arbitral tribunal, when making a binding decision, must clearly state its legal decision and facts along with the reasons accordingly and may, at the request of the Contracting Party, make a binding decision on the following forms of recovery:

A) a statement that the effect of a Contracting Party is contrary to the terms of its obligation under this Agreement;

B) a recommendation to the Contracting Party to bring its actions in line with the obligations under this Agreement;

C) financial compensation for all losses or damages to the investor of the Contracting Party or its investments; or

D) any other form of recovery to which the Contracting Party against which a binding decision was taken agrees, including restitution against the investor.

2) The arbitrator's decision is final and binding for the parties to the dispute.

## **Article 25. Costs**

Each Contracting Party shall bear the costs of its representation in the proceedings. The expenses of the arbitral tribunal shall be paid equally by the Contracting Parties, unless the arbitral tribunal stipulates different amounts of payments.

## **Article 26. Enforcement**

With respect to a decision to pay financial compensation that has not been completed within one year from the date of the decision, coercive measures may be taken by the court of the States of the Contracting Parties, according to the jurisdiction over the assets of the defaulting Party.

# **Chapter 3. Final Provisions**

## **Article 27. Scope and Application of the Agreement**

1) This Agreement applies to investments made on the territory of the State of the Contracting Party in accordance with its national law.

2) This Agreement does not apply to claims that have been settled or procedures in accordance with Article 14 (1) (c) that were put forward before the entry into force of this Agreement.

## **Article 28. Consultations**

Each Contracting Party may invite the other Contracting Party to consult on any matter relating to this Agreement. The place and time of consultations are determined through diplomatic channels.

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## **Article 29. Amendments and Changes**



By mutual agreement of the Contracting Parties, this Agreement may be amended and amended by a separate Protocol that enters into force in accordance with the provisions of Article 30 of this Agreement and is an integral part of this Agreement.

## **Article 30. Entry Into Force and Duration**

1) This Agreement is subject to ratification and shall enter into force on the first day of the third (3) month following the month in which the exchange of instruments of ratification has occurred.

2) This Agreement is valid for ten (10) years and will automatically be renewed for subsequent ten-year periods if one of the Contracting Parties does not notify the other Contracting Party within twelve (12) months before the expiration of the next term of its intention to terminate it in writing Through diplomatic channels.

3) With respect to investments made before the expiry date of this Agreement, the provisions specified in Articles 1 to 29 of this Agreement may remain in force for a period of ten (10) years from the date of termination of this Agreement.

Done in Bishkek on April 22, 2016 in two copies in Kyrgyz, German, Russian and English, all texts are equally authentic. In the event of any disagreement in the interpretation of the provisions of this Agreement, the English text shall prevail.

For the Government of the Republic of Austria

Wolfgang Bányai

Ambassador

For the Government of the Kyrgyz Republic

Arzybek O. Kozhoshev

Minister of Economy