

# THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA AND THE GOVERNMENT OF THE KYRGYZ REPUBLIC AGREEMENT ON INVESTMENT PROMOTION AND PROTECTION

The Government of the Republic of Lithuania and the Government of the Kyrgyz Republic, further - Contracting Parties,

Desiring the development of the two countries economic cooperation;

Determined to create and maintain favorable conditions for a Contracting Party to investments of investors of the other Contracting Party in the territory of equality and mutual benefit, and

Recognising that foreign investment promotion and protection contributes to the development of private business and both of the Contracting Parties in economic prosperity,

Have agreed as follows:

## Article 1. Definitions

In this Agreement:

1. The term "investment" means any kind of asset by one Contracting Party to the investor invests the other Contracting Party in the territory, under the latter Contracting Party (the host Contracting Party State) national legislation and, in particular, but not exclusively, includes:

- a) movable and immovable property and other rights, in particular mortgage claims, the right to interception and collateral, and similar rights;
- b) shares, bonds and other forms of participation in the enterprise,
- c) claims to money or to take any other actions having economic value;
- d) intellectual property rights, in particular copyrights, industrial property rights (in particular rights to patents, industrial designs and models, trademarks, names of legal entities) and know-how (unpatented know-how);
- e) goodwill;
- f) any right to engage in economic activity on the contract, and any licenses, including concessions to prospect for, extract and exploit natural resources.

Any change in the form of investment does not change the nature of the investment, provided that such change was made by the host Contracting Party's national legislation.

2. The term "investor" means both Contracting Parties:

- a) natural persons who are of one of the country's citizens, and stateless persons, according to the Contracting Party national legislation permanently residing in a Contracting Party in the territory;
- b) legal entities established or developed by the Contracting Party national legislation.

3. The term "income" means all of the investment funds received and, in particular, includes profits, capital gains, interest, dividends, royalties and all kinds of wages.

4. The term "territory" in both Contracting Parties means the territory in which each Contracting Party shall implement its sovereign rights or to exercise jurisdiction in accordance with their national legislation and international law.

5. The term "national legislation" to both contracting parties means legislation in force in each Contracting Party in the territory.

6. LIBOR - London Banks granted short-term borrowing rate.

## **Article 2. Investment Promotion**

1. Each Contracting Party shall encourage investors of the other Contracting Party to invest in its territory and in accordance with its national law recognizes such investments.

2. One Contracting Party, at the request of the other Contracting Party, will provide information on the rules or procedures of the national law of the state relating to investments in accordance with this Agreement.

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

1. Investments and income of investors of each Contracting Party will be provided with a fair and equal treatment and full protection and security in the territory of the state of the other Contracting Party will be ensured. None of the Contracting Parties will prejudice the unjustified, unreasonable or discriminatory measures of the management, exploitation, use, possession, expansion or the right to dispose of such investments.

2. Each Contracting Party shall apply its national territory of the other Party of investors for investments and the income from the treatment which it accords to its own investors and investment income, or any third-country investors for investment, taking into account the fact that a more favorable treatment.

3. Each Contracting Party shall in their national territory of the other Contracting Party to investors of their investment management, maintenance, use, possession, development with respect to treatment no less favorable than that accorded to its own investors or any third State, taking into account the fact that mode It is more favorable to the investor.

4. The terms of this Agreement shall not be construed as an obligation of one Contracting Party to extend to investors of the other Contracting Party the benefits of any regime, preferences or privileges granted to investors or their investments of any third state on the basis of the obligations of these Contracting Parties from membership of a customs, economic or monetary union, common market or free trade area arising from an international treaty or mutual agreement of that customs a monetary, economic or monetary union, a common market or a free trade area.

5. This Article shall not be construed as obliging one Contracting Party to extend to investors of the other Party privileges arising from existing or future membership in the customs union, free trade zone or participation in regional cooperation, or other form of international conventions on double taxation.

## **Article 4. Expropriation**

1. Neither Contracting Party neeksproprijuoja, nenacionalizuoja other Contracting Party of the investor and do not they have the resources, causing similar effects (hereinafter - expropriation), except in cases where:

- a) the expropriation is in the public's needs and in accordance with national legislation;
- b) the expropriation is carried out non-discriminatory basis;
- c) given prompt, adequate and effective compensation.

2. The compensation referred to in paragraph 1, point C, shall comply with the expropriated investments at market value that existed before the expropriation or before the impending expropriation became public knowledge, but not before, and paid no reason to delay. The compensation shall include interest calculated from the date of expropriation until full payment of the London Interbank Offered Rate (LIBOR).

3. Investors have been victims of expropriation, without prejudice to Article 8 of the Agreement set out their rights and in accordance with the Contracting Party national legislation, have the right to demand that the Contracting Party State judicial or other competent and independent authority shall immediately examine the case and set the value of the investment under the provisions of this Article.

## **Article 5. Compensation for Losses**

1. Investors of one Contracting Party who suffer losses in their investments, the other Contracting Party in the territory of

war, state of emergency, rebellion, public disorder, or other similar events, the latter Contracting Party treatment no less favorable than that accorded to its own investors or any third State.

2. Notwithstanding paragraph 1, a Contracting Party to investors who suffer losses in the other Contracting Party in the territory:

- a) the other Contracting Party, the armed forces or the state authorities seized their investment or part thereof, or
- b) the other Contracting Party, the armed forces or state institutions destruction of their investment or part of it when it was not necessary in the circumstances, the investment must be returned or refunded. In any case, the repayment or reimbursement must be immediately, adequately and effectively.

## **Article 6. Transfers**

1. Each Contracting Party shall guarantee to investors of the other Party that its territory and from its territory to be transferred without restrictions on investment-related payments. Such payments shall be made in accordance with the Contracting Parties to the national legislation and, in particular, but not exclusively, shall include:

- a) the initial capital and the additional amount of investment to maintain or develop;
- b) income;
- c) the income from the total or partial liquidation of investments,
- d) the funds for investment-related credit to cover;
- e) compensation under Articles 4 and 5 of the Convention;
- f) payments in accordance with Article 7 of the guarantee;
- g) earnings and other remuneration to staff in connection with the investment.

2. Without prejudice to the measures adopted by the European Union, the transfer is carried out without the base without delay in the currency, which has been carried out the initial investment, or in any freely convertible currency, if it is accepted by investors, according to the applicable date of the transfer current market rate of exchange.

3. Pursuant to paragraphs 1 and 2, the Contracting Parties shall apply to transfers not less favorable than that accorded to transfers related to any third country investors.

## **Article 7. Subrogation**

1. If one Contracting Party or its representative shall pay its investors under a guarantee it has provided for an investment in the other Contracting Party in the territory, the latter Contracting Party shall recognize:

- a) the rights of the first Contracting State and according to national legislation or this Agreement;
- b) that the first Contracting Party or its appointed agent for subrogation shall be entitled to the rights of the investor and to raise the requirements to the extent and the investor.

2. The subrogation rights or claims shall not exceed the investor's original rights or claims.

## **Article 8. Settlement of Investment Disputes**

1. one Contracting Party and the other Contracting Party of the investor disputes relating to the recent investments in the territory of a Contracting Party shall be settled, if possible, in peace. The investor of the dispute in writing to the Contracting Party to the territory of the investments, along with detailed information.

2. If, within six (6) months from the date of receipt in paragraph 1 of the written notification, the dispute can not be settled amicably, the investor has the right to refer the dispute to the following instances:

- The Contracting Party in whose territory the investment is the competent court or the third court (national commercial arbitration institutions);
- The International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on States and other

countries for nationals of Investment Disputes, opened for signature in 18 March 1965, in Washington, DC, on conciliation and arbitration under the ICSID Arbitration Rules, if both Contracting Parties acceded to this Convention, or

- An 'ad hoc' Arbitral Tribunal established under the United Nations Commission on International Trade Law (UNCITRAL) arbitration rules, unless otherwise agreed by the parties.

3. The arbitration decision is final and binding on the parties. Both Contracting Parties shall immediately take the following decisions and recognize them by the Contracting Party's national legislation and ensure effective implementation of its territory.

4. A Contracting Party which is a party to the dispute can not in any legal proceedings or the enforcement stage, based on the fact that the other Contracting Party, the investor has received or will receive compensation under an insurance contract for the whole or part of the damage suffered.

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

1. Any dispute between the Contracting Parties concerning the interpretation or application of the Agreement, as far as possible, be settled through diplomatic channels.

2. If the Contracting Parties fail to reach an agreement within six (6) months from the start of one of the contracting parties may apply to the arbitration.

3. Such arbitration in each case composed as follows: two (2) months from the date on which either Contracting Party to the other Contracting Party notice of arbitration, each Contracting Party shall appoint one arbitrator. These two arbitrators together within two months elect a third arbitrator who is a national. The third arbitrator, the two contracting parties' agreement, appointed chairman of the arbitration.

4. If the paragraph 3 the period of arbitration has not been concluded and there is no other agreement, either Contracting Party may request the International Court of Justice to make the necessary appointments. If the President is a Contracting Party, a citizen of the state or for other reasons can not perform their duties, to make the necessary appointments requested the International Court of Justice of the Vice-President. If the Vice-President is a Contracting Party, a citizen of the state or for other reasons can not perform their duties, to make the necessary appointments invited by other precedence International Court of Justice who is not a citizen of the Contracting Parties states.

5. The arbitral tribunal shall determine its own rules of procedure. The arbitral tribunal shall decide by majority vote. The decisions are final and binding on both Contracting Parties.

6. The two Contracting Parties shall bear their own arbitration members and their representation in arbitration proceedings costs; President of the Court of Arbitration and other expenses of the two Contracting Parties shall be borne equally. However, arbitration may decide that a greater share of the cost borne by the Contracting Party, and such decision shall be binding on both Contracting Parties.

## **Article 10. More Favorable Provisions**

1. If one Contracting Party national legislation or international law of the other Contracting Party to investments of investors provides for more favorable treatment than those laid down in this Agreement, such provisions shall take precedence over the provisions of the Agreement to the extent that they are more favorable.

2. Each Contracting Party shall comply with the commitments of the other Contracting Party, the investor concerned.

## **Article 11. Consultation**

The Contracting Parties shall implement this Agreement shall hold consultations.

## **Article 12. Agreement Application**

1. This Agreement shall apply to all investments, whether made before and after the entry into force of this Agreement. However, this Agreement does not apply to investment-related disputes, and (or) claims that have been resolved and (or) meet before the entry into force of the Agreement.

2. This Agreement shall also not apply to the relationships related to land acquisition, use, operation or possession of it. These issues are regulated by each Contracting Party national legislation.

## **Article 13. Amendments and Additions**

This Agreement by mutual consent of the Contracting Parties may be amended and supplemented by placing it appropriate protocols. Protocols are an integral part of this Agreement. Such changes and additions shall enter into force in accordance with Article 14.

## **Article 14. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force from the date of receipt of the last written notification that the Contracting Parties have fulfilled their states' internal procedures necessary for its entry into force, and is valid for fifteen (15) years. This Agreement shall be automatically extended for a further period of ten years, unless one of the Contracting Party twelve (12) months prior to the annual expiry date of the written notice to the other Contracting Party of its intention to terminate this Agreement.

2. The investments made before the termination of this Agreement, this Agreement shall be valid for ten (10) years from the date of termination of this Agreement.

Done in Bishkek on 15 May 2008, in duplicate in the Lithuanian, Kyrgyz and Russian languages. All texts being equally authentic.

In case of disagreement on the interpretation of the provisions of this Agreement, the Contracting Parties shall be guided by the text in the Russian language.

On behalf of the Government of the Republic of Lithuania

On behalf of the Government of the Kyrgyz Republic