

# Agreement between the Swiss Federal Council and the Government of the Republic of Kazakhstan on the Promotion and Reciprocal Protection of Investments.

12 May 1994 Ratified by the Law of the Republic of Kazakhstan of 8 May 1998, No 228-1 "On ratification of the Agreement between the Government of the Republic of Kazakhstan and the Swiss Federal Council on the Promotion and Reciprocal Protection of Investments".

Preamble

The Swiss Federal Council and the Government of the Republic of Kazakhstan, hereinafter referred to as the "Contracting Parties"

Desiring to intensify economic cooperation to the mutual benefit of both States,

Intending to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing the need to promote and protect foreign investments with the aim to foster the economic prosperity of both States,

Have agreed as follows:

## Article 1. Definitions

For the purpose of this Agreement:

(1) The term "investor" refers with regard to either Contracting Party to

(a) Natural persons who, according to the law of that Contracting Party, are considered to be its nationals;

(b) Legal entities, including companies, corporations, business associations and other organisations, which are constituted or otherwise duly organised under the law of that Contracting Party and have their seat, together with real economic activities, in the territory of that same Contracting Party;

(c) Legal entities established under the law of any country which are, directly or indirectly, controlled by nationals of that Contracting Party or by legal entities having their seat, together with real economic activities, in the territory of that Contracting Party.

(2) The term "investments" shall include every kind of assets and particularly:

(a) Movable and immovable property as well as any other rights in rem, such as servitudes, mortgages, liens, pledges;

(b) Shares, parts or any other kinds of participation in companies;

(c) Claims to money or to any performance having an economic value;

(d) Rights in the field of intellectual property (such as copyrights, patents, trade or service marks, trade names, indications of origin), technical processes, know-how and goodwill;

(e) Concessions under public law, including concessions to search for, extract or exploit natural resources as well as all other rights given by law, by contract or by decision of the authority in accordance, with the law.

(3) The term "territory" means the territory of either Contracting Party and includes the maritime areas adjacent to the Coast of the State, concerned, to the extent to which that State may exercise sovereign rights or jurisdiction in those areas

according to international law.

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

(1) Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.

(2) When a Contracting Party shall have admitted an investment on its territory, it shall grant the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Contracting Party shall, whenever needed, endeavour to issue the necessary authorizations concerning the activities of consultants and other qualified persons of foreign nationality.

## **Article 3. Promotion of Investments**

(1) Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale and, should it so, happen, liquidation of such investments. In particular, each Contracting Party shall issue the necessary authorizations mentioned in Article 2, paragraph (2) of this Agreement.

(2) Each Contracting Party shall ensure fair and equitable treatment within its territory of the investments of the investors of the other Contracting Party. This treatment shall not be less favourable than that granted by each Contracting Party to investments made within its territory by its own investors, or than that granted by each Contracting Party to the investments made within its territory by investors of the most favoured nation, if this latter treatment is more favourable.

(3) The treatment of the most favoured nation shall not be construed so as to oblige one Contracting Party to extend to investors of the other the benefit on any treatment, preference or privilege resulting from:

(a) An existing or future free trade agreement, a customs or economic union or a similar regional organization to which either of the Contracting Parties is or may become a party;

(b) An international agreement on the avoidance of double taxation.

## **Article 4. Free Transfer**

Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investors the free transfer of the payments relating to these investments, particularly of:

(a) Interests, dividends, benefits and ether current returns;

(b) Repayments of loans;

(c) Amounts assigned to cover expenses relating to the management of the investment;

(d) Royalties and other payments deriving from rights enumerated in Article 1, paragraph (2), letters (c), (d) and (e) of this Agreement;

(e) Additional contributions of capital necessary for the maintenance or development of the investment;

(f) The proceeds of the sale or of the partial or total liquidation of the investment, including possible increment values.

## **Article 5. Dispossession, Compensation**

(1) Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalization or any other measures having the same nature or the same effect against investments of investors of the other Contracting Party, unless the measures are taken in the public interest, on a non discriminatory basis, and under due process of law, and provided that provisions be made for effective and adequate compensation. The amount of compensation shall be settled in the currency of the country of origin of the investment and paid without delay to the person entitled thereto without regard to its residence of domicile.

(2) The investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or rebellion, which took place in the territory of the other Contracting Party shall benefit, on the part of this latter, from a treatment in accordance with Article 3, paragraph (2) of this Agreement as regards restitution

indemnification, compensation or other settlement.

## **Article 6. Pre-agreement Investments**

The present Agreement shall also apply to investments in the territory of a Contracting Party made in accordance with its laws and regulations by investors of the other Contracting Party prior to the entry into force of this Agreement.

## **Article 7. More Favourable Provisions**

Notwithstanding the terms set forth in the present Agreement, more favourable provisions which have been or may be agreed upon by either of the Contracting Parties with an investor of the other Contracting Party are applicable.

## **Article 8. Principle of Subrogation**

Where one Contracting Party has granted any financial guarantee against non-commercial risks in regard to an investment by one of its investors in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party by virtue of the principle of subrogation to the rights of the investor when payment has been made under this guarantee by the first Contracting Party.

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

(1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party consultations will take place between the parties concerned with a view to solving the case amicably.

(2) If these consultations do not result in a solution within twelve months and if the investor concerned gives a written consent, the dispute shall be submitted to the arbitration of the International Centre for Settlement of Investment Disputes (I.C.S.I.D.), instituted by the Convention of Washington of March 18, 1965, for the settlement of disputes regarding investments between States and nationals of other States.

(3) Each Contracting Party hereby consents to the submission of an investment dispute to I.C.S.I.D.

(4) The Contracting Party which is party to the dispute shall not at any time during the settlement procedure or the execution of the sentence, allege the fact that the investor has received, by virtue of an insurance contract, a compensation covering the whole or part of the incurred damage.

(5) The award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in the Convention. Execution of the award shall be governed by the laws concerning the execution of judgments in force in the Contracting Party in whose territories such execution is sought.

(6) Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to I.C.S.I.D., unless the other Contracting Party does not abide by and comply with the award rendered in such dispute.

## **Article 10. Disputes between Contracting Parties**

(1) Disputes between Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be solved through diplomatic channels.

(2) If both Contracting Parties cannot reach an agreement within twelve months after the beginning of the dispute between the Parties, the latter shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator and these two arbitrators shall nominate a chairman who shall be a national of either State.

(3) If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

(4) If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

(5) If, in the cases specified under paragraphs (3) and (4) of this Article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented, or if he is a national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.

(6) Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure.

(7) The decisions of the tribunal are final and binding for each Contracting Party.

## **Article 11. Observance of Commitments**

Either Contracting Party shall constantly guarantee the observance of the commitments it has entered into with respect to the investments of the investors of the other Contracting Party.

## **Article 12. Final Provisions**

(1) This Agreement shall enter into force on the day when both Governments have notified each other that they have complied with the constitutional requirements for the conclusion and entry into force of international agreements, and shall remain binding for a period of ten years. Unless written notice of termination is given six months before the expiration of this period, the Agreement shall be considered as renewed on the same terms for a period of two years, and so forth.

(2) In case of official notice as to the termination of the present Agreement, the provisions of Articles 1 to 11 shall continue to be effective for a further period of ten years for investments made before official notice was given.

For the Swiss Federal Council

For the Government of the Republic of Kazakhstan