

# **Agreement between the Government of the Republic of Azerbaijan and the Government of Turkmenistan on promotion and mutual protection of investments**

The Government of the Republic of Azerbaijan and the Government of Turkmenistan, hereinafter referred to as the "Contracting Parties",

Noting the importance of protecting the investments of investors of the other Contracting Party in the territory of one Contracting Party without discrimination;

Reaffirming their commitment to the democratic principles enshrined in international human rights instruments and the importance of the rule of law for the development of international trade and economic co-operation;

Desiring to promote stronger co-operation in the territory of the other Contracting Party in respect of the investments of investors of one Contracting Party;

Recognizing that the promotion and reciprocal protection of investments under this Agreement will stimulate the flow of investment and promote the economic development of the Contracting Parties;

Striving to maximize the efficient use of economic resources and improve living standards in their countries;

Desiring to strengthen and expand economic cooperation between the Contracting Parties, they agreed on the following:

## **Article 1. Definitions**

The terms for the purposes of this Agreement are as follows.

1. "Investments" means the investment of capital or other resources, the expectation of profit, the acceptance of risk, and the acceptance of risk by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the national law of the last Contracting Party. Means any type of asset that has the characteristics of contributing to the development of a State Party - a recipient of investments and, in particular, not limited to:

1.1. movable and immovable property or any other property and property rights;

1.2. reinvested income;

1.3. shares, government securities, corporate bonds and any other form of participation in the company;

1.4. claims for cash, except for the demand for cash arising only from the commercial contract for the sale of goods and services, as well as the extension of the loan term for investments;

1.5. intellectual property rights (copyright, related rights, rights to integrated circuit topologies and data sets, inventions, utility models, industrial designs, trademarks, geographical indications, company names, technical processes, know-how (trade secrets)) and rights to goodwill;

1.6. concessions granted on the basis of legislative acts, including concessions granted for the exploration, development, production, extraction or use of natural resources.

Any change in the form of the investment, as well as the reinvested investment, shall not affect the nature of the investment, unless it is contrary to the law of the State of the Contracting Party in whose territory the investment is made.

2. "Investor" means for both Contracting Parties:

2.1. Any natural person who is a national of one of the Contracting Parties and who invests in the territory of the State of the other Contracting Party in accordance with the national legislation of the other Contracting Party and the provisions of this

Agreement;

2.2. Any legal entity registered or established in accordance with the national law of a Contracting Party, located in the territory of a Contracting Party and carrying out real business activities, investing in the territory of the last Contracting Party in accordance with the national legislation of the other Contracting Party and the provisions of this Agreement person. This notion does not apply to legal entities owned or controlled by persons holding the citizenship of a State which has no diplomatic relations with the State of the Contracting Party receiving the investment.

3. "Income" - funds received from investments, and in particular profits, dividends, interest, royalties, income from an increase in the value of property or other similar payments related to investments.

4. "Territory of the Contracting Parties" means the following:

- to the Republic of Azerbaijan - the territory of the Republic of Azerbaijan;

- Turkmenistan - the territory of Turkmenistan.

## **Article 2. Investment Promotion and Protection**

1. Each Contracting Party shall promote the investments of investors of the other Contracting Party in the territory of its State and shall accept such investments in accordance with the national legislation of its State.

2. Each Contracting Party shall apply a favorable regime to the investments of investors in the territory of the other Contracting Party, as well as ensure their protection and security.

3. Neither Contracting Party shall allow compulsory, unreasonable or biased actions in respect of the development, operation, management, ownership, placement or other disposition of investments of investors of the other Contracting Party in the territory of its State.

4. Each Contracting Party shall, in accordance with its national law, impartially consider necessary investments in the territory of its State in connection with investments made by the investor, including permits for the employment of executives, managers, specialists and technical personnel of the investor's choice.

## **Article 3. Transparency**

1. Each Contracting Party shall make public its information on its general applicable legislation, as well as on its international agreements, which may affect the investments of investors of the other Contracting Party in the territory of one Contracting Party.

2. The receiving Contracting Party shall have the right to request information from the potential investor or the other Contracting Party on the history of corporate governance, as well as on its activities and experience as an investor. The receiving Contracting Party undertakes to ensure the confidentiality of the personal information obtained, as well as the information relating to certain investors or investments.

## **Article 4. Treatment In Relation to Investments**

1. Each Contracting Party shall apply in its territory a treatment not less favorable than that applied to the investments and income of investors of the other Contracting Party in relation to the investments and income of investors of its own State.

2. Each Contracting Party undertakes to apply the treatment provided for in paragraph 1 of this Article in respect of the management, maintenance, use or disposal of its investments by investors of the State of the other Contracting Party in the territory of its State.

## **Article 5. Exceptions**

The provisions of this Agreement shall not be construed as an obligation of one Contracting Party to apply an advantage, concession or privilege of any existing or future regime to investors and investors of the State of the other Contracting Party granted by a:

- free trade zone, customs union, common market, economic and monetary union agreements or other similar regional economic integration agreements, as well as regional labor market agreements or any cross-border trade in which one of the Contracting Parties is or may be a party; agreement;

- agreements on the elimination of double taxation or any other international agreement relating to full or partial taxation or any national legislation relating to taxation;
- multilateral agreements relating in whole or in part to investments.

## **Article 6. Expropriation**

1. Investments of investors of any Contracting Party shall be non-discriminatory and equal to the results of expropriation or nationalization, subject to prompt, adequate and effective compensation upon execution, except in cases where the interests of the State in the territory of the other Contracting Party are concerned (hereinafter referred to as "expropriation"), may not be subject to expropriation, nationalization or any case of forced confiscation.
2. The compensation referred to in paragraph 1 of this Article shall be commensurate with the market value of the expropriated investment, whichever is earlier, on the date immediately before expropriation or on the date immediately before the forthcoming expropriation is made public. Compensation shall be freely transferred from the territory of the Contracting Party in which the investment is made to the territory of the other Contracting Party without delay and in accordance with Article 8 of this Agreement. In the event of a delay in compensation, the amount of compensation shall include interest at the commercial rate determined on a market basis from the date of expropriation to the date of actual payment.
3. Without prejudice to Article 11 of this Agreement, an investor whose investments have been expropriated shall have the right to have his case and the valuation of his investments in accordance with the principles set out in this Article reviewed by a court or other competent authority of the other Contracting Party.

## **Article 7. Compensation for Damage**

1. If investments of investors of one Contracting Party in the territory of the other Contracting Party have been damaged as a result of war or other military conflict, civil unrest or other similar events, the latter shall be subject to restitution, indemnification and compensation, or any other payment regime, which shall be no less favorable than the regime applied by the latter Contracting Party to its investors or to investors of any third State in respect of such loss.
2. Without prejudice to paragraph 1 of this Article, in any of the circumstances referred to in the preceding paragraph, an investor in the territory of one Contracting Party shall suffer damage in the territory of the other Contracting Party as a result of:
  - confiscation of their investments or part of them by the armed forces or authorities of the latter;
  - in the event of the destruction of its investments or part thereof by the armed forces or authorities of the latter State without the necessity of circumstances, the latter Contracting Party shall, in any case, immediately, adequately and effectively apply restitution or compensation. Compensation shall be exercised in accordance with paragraphs 2 and 3 of Article 6 of this Agreement from the time of confiscation or destruction of the investment until the date of actual payment.

## **Article 8. Transfer of Payments**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments for their investments abroad after payment of all taxes and other obligations in accordance with the legislation of the Contracting Party in whose territory the investment is made, including but not limited to:
  - 1.1. principal and additional amounts to support, develop or increase capital;
  - 1.2. profit;
  - 1.3. income from the sale or transfer of all or part of investments, including the sale of shares;
  - 1.4. the amounts necessary to cover the costs arising from the operation of the investment, the payment of debts, the payment of royalties, the payment of salaries of administrative staff, license fees or other similar expenses;
  - 1.5. compensation to be paid in accordance with Articles 6, 7 and 9 of this Agreement;
  - 1.6. payments arising from the settlement of the dispute;
  - 1.7. salaries and other bonuses of foreign employees in connection with investments.

Each Contracting Party shall ensure that such payments are made in a freely convertible currency, at the exchange rate applicable on the day on which the investor makes the relevant transfer, in accordance with the laws governing currency in the territory of the Contracting Party in which the investment is made.

2. Notwithstanding paragraph 1 of this article, the receiving Contracting Party may, in accordance with its domestic law, delay or prevent the transfer of an impartial, non-discriminatory audit of an investor in the following cases:

- payment of taxes and duties;
- bankruptcy, bankruptcy or protection of creditors' rights;
- criminal or other offenses;
- ensuring compliance with the decisions or procedures of the courts and tribunals of the receiving Contracting Party.

## **Article 9. Subrogation**

If one Contracting Party or its designated agency (the first Contracting Party) makes a payment under an indemnity, guarantee or insurance contract for investments in the territory of the other Contracting Party (the second Contracting Party), the other Contracting Party shall make such payments. recognizes the transfer of the relevant rights and claims of the receiving investor to the first Contracting Party.

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

1. Any dispute arising out of direct investment between one Contracting Party and an investor in the State of the other Contracting Party shall be settled amicably, through consultations and negotiations between the two parties to the dispute.

2. A dispute over an investment submitted for consideration under this Article shall be based on a claim that the measure applied by one Contracting Party violates any obligation under this Agreement and that the investor of the other Contracting Party suffers as a result. In the event of a dispute, the investor shall submit a written notice of intent ("notice of intent") containing the following information about the investment in the territory of the Contracting Party:

- 2.1. name and address of the investor, if the claim is submitted on behalf of a commercial organization, name, address and place of registration of the commercial organization;
- 2.2. confirmation of the violation in respect of each claim under this Agreement, as well as other circumstances relevant to the claim;
- 2.3. the legal and factual basis of each claim;
- 2.4. the amount required to secure the claim and compensation for damages.

3. If, as a result of negotiations, the dispute is not resolved within six months from the date of the written request for settlement of the dispute, the plaintiff may submit the claim to one of the following dispute resolution bodies for consideration:

- 3.1. To the competent courts of the Contracting Party in whose territory the investment is made;
- 3.2. The International Center for the Settlement of Investment Disputes (hereinafter referred to as the "Center"), established in accordance with the Convention on the Settlement of Investment Disputes between States and Individuals and Legal Entities of Other States, declared open for signature in Washington on 18 March 1965; if there is a written consent of the parties to the dispute;
- 3.3. To the ad hoc arbitral tribunal to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

4. An investor who has applied to the national court for consideration of the dispute may not apply to one of the arbitral tribunals referred to in paragraph 3 of this Article for consideration of the dispute.

5. Neither Contracting Party which is a party to the dispute may at any stage of the proceedings or the enforcement of the judgment object to the indemnification of the investor who is a party to the dispute in full or in part on insurance.

6. Disputes shall be settled in accordance with the national law and international law of the receiving Contracting Party.

7. The decision of the court must be final and binding on the parties to the dispute.

## **Article 11. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of the provisions of this Agreement shall be settled as far as possible through negotiations and consultations.

2. If the dispute is not resolved within 6 (six) months after the receipt of a written request by one of the Contracting Parties to the other Contracting Party to initiate negotiations, the dispute shall be submitted to the Arbitration Court at the request of one of the Contracting Parties.

3. Such Arbitral Tribunal shall be established for each individual case, for which each Contracting Party shall appoint one member of the Arbitral Tribunal within two months from the date of receipt of the notification of arbitration. These two members of the Court shall then, with the consent of both Contracting Parties, elect a national of a third State who shall preside over the Court of Arbitration. The President of the Court shall be appointed within 4 (four) months from the date of appointment of the last two members of the Arbitration Court.

4. If the necessary appointments are not made within the time limits referred to in paragraph 3 of this Article, unless otherwise agreed by the Contracting Parties, either Contracting Party shall notify the President of the United Nations International Court of Justice (hereinafter referred to as the International Court of Justice). can apply. If the President of the International Court of Justice is a national of any Contracting Party or is unable to comply with the request for any other reason, the Deputy President of the International Court of Justice shall be invited to make the necessary appointments. Also, if the Deputy President of the International Court of Justice is a national of one of the Contracting Parties or is unable to comply with the request for any other reason, The appointment of a necessary member of the International Court of Justice shall be offered to a member of the International Court of Justice who is not a national of any Contracting Party and there are no other reasons preventing him from performing this function.

5. The arbitral tribunal shall reach its decision by a majority of votes. Its decision shall be final and binding on the Contracting Parties. Each Contracting Party shall pay the expenses of the member of the arbitral tribunal appointed by it and of its representation in the proceedings. The expenses of the President of the Court and other expenses shall be borne equally by the Contracting Parties. The tribunal may decide otherwise on the payment of costs. In all other respects, the Arbitral Tribunal shall determine its own rules of procedure.

6. Matters between the Contracting Parties shall be settled in accordance with the provisions of this Agreement and the generally accepted rules of international law.

## **Article 12. Application of other Rules**

1. If, in addition to this Agreement, the provisions of the domestic law of one Contracting Party or existing or future obligations under an international agreement between the Contracting Parties apply for a more favorable regime for investments made by investors of the other Contracting Party; if it establishes a general or special rule, those provisions shall prevail over this Agreement to the extent that they are more favorable to the investor.

2. Nothing in this Agreement shall prevent a Contracting Party from complying with any special obligation which may be associated with the investments of an investor in the State of the other Contracting Party.

## **Article 13. Application of the Agreement**

1. Upon entry into force of this Agreement, this Agreement shall apply to all investments made by investors of the State of one Contracting Party in the territory of the State of the other Contracting Party.

2. Each Contracting Party reserves the right to determine the areas or functions of economic activity in which investments are restricted or permitted. This provision applies equally to all investments and is implemented without discrimination.

## **Article 14. Consultations**

The Contracting Parties shall, at the request of either of them, consult on questions concerning the interpretation or application of this Agreement. Such consultations shall take place at an agreed place and date through the diplomatic channels between the competent authorities of the Contracting Parties.

## **Article 15. Main Limitations**

1. This Agreement shall not be construed to prevent a Contracting Party from taking the necessary measures to protect its national security interests in the event of an armed conflict, military operation or other emergency.
2. Nothing in this Agreement shall be construed to prevent a Contracting Party from taking the necessary measures to maintain public order, provided that such measures are not applied in the sense of the possibility of accidental or unjustified discrimination by one Contracting Party or a distorted restriction of investment.
3. The provisions of this Article shall not apply to Article 8, paragraph 1.5, of this Agreement.

## **Article 16. Additions and Changes**

By mutual consent of the Contracting Parties, amendments and additions may be made to this Agreement, which are an integral part of it, formalized in separate protocols and entered into force in accordance with Article 17 of this Agreement.

## **Article 17. Final Provisions**

1. This Agreement shall enter into force 30 (thirty) days after the date of receipt by the Contracting Parties through diplomatic channels of the last written notification of the completion of the internal procedures necessary for its entry into force.
2. This Agreement shall be concluded for a period of 10 (ten) years and shall be automatically terminated unless either Contracting Party notifies the other Contracting Party of its intention to terminate this Agreement through diplomatic channels at least 12 (twelve) months prior to the expiration of this period. extended for the next five years.
3. In respect of investments made prior to the termination of this Agreement and to which the provisions of this Agreement have been applied, all the terms of the other articles of this Agreement shall apply within 10 (ten) years after the date of termination of this Agreement.

Done in duplicate at Ashgabat this 22nd day of November 2018, in the Azerbaijani, Turkmen and Russian languages, all texts being equally authentic. In case of divergence of interpretation of the provisions of this Agreement, the Russian text shall prevail.

On behalf of the government of the Republic of Azerbaijan

On behalf of the government of Turkmenistan