

# **Agreement between the Government of the Kyrgyz Republic and the Government of the French Republic on Mutual Investment Promotion and Protection**

The Government of the French Republic and the Government of the Kyrgyz Republic, hereinafter referred to as the contracting parties;

Desiring to enhance economic cooperation between the two States and to create favourable conditions for investments Kyrgyzstan in France and investments of France in Kyrgyzstan;

Convinced that the promotion and protection of such investments will be conducive to the stimulation of capital and technology transfer between the two countries in the interest of their economic development,

Have agreed as follows:

## **Article 1.**

For the purposes of this Agreement:

1. The term "Investment" means all assets, such as property rights and interests of all kinds and, in particular, though not exclusively:

- a) Movable and immovable property, as well as other rights therein, such as mortgages, collaterals, the rights to use, guarantees and similar rights;
- b) Shares, premium on an issue and other types of either direct participation or participation by a minority of votes in companies established in the territory of either Contracting Party;
- c) Bonds, claims to money and services of economic value;
- d) Intellectual property rights, commercial and industrial such as copyrights, patents, licences, trademarks, industrial designs or models, technical processes, trade names, know-how and goodwill;
- e) Business concessions provided under the law or contract, including concessions for the exploration, development, extraction and use of the natural resources, including those located in the maritime zone of the Contracting Party.

It is understood that these assets are assets that have already been invested or can be invested after the entry of this Agreement into force in accordance with the laws of the Contracting Party, in the territory of which or in the marine zone of which these investments are made.

Any change in the form of the assets investing does not affect their qualification as an investment provided that such changes do not contradict the legislation of the Contracting Party, in the territory or marine zone of which this investment is made.

2. The term "national" means natural persons having the nationality of one of the Contracting Parties.

3. The term "company" means any legal entity established in the territory of either Contracting Party in accordance with the legislation of that Party and located in the territory of that Party, directly or indirectly controlled by either nationals of either Contracting Party or by legal entities located in the territory of either Contracting Party and established in accordance with the legislation of that Party.

4. The term "income" means all funds received from investments, such as profit, charges and interest earned during specific period.

Income from investments, as well as in case of re-investment, income from re-investments will be ensured the same protection, as that of the investments.

5. This Agreement extends to the territory of each Contracting Party, as well as to the marine zone of each Contracting Party, hereinafter defined as the economic zone and continental shelf extending beyond the territorial waters of each Contracting Party over which they exercise sovereign rights and jurisdiction in accordance with international law for the purpose of exploration, development and conservation of the natural resources.

## **Article 2.**

Each Contracting Party recognizes and encourages, within the framework of its laws and the provisions of this Agreement, all investments made by companies and nationals of the other party in its territory and in the maritime area.

## **Article 3.**

Each Contracting Party undertakes to provide, in its territory and in the maritime area, fair and equitable treatment in accordance with the principles of international law, to investments of nationals and companies of the other party and to ensure the enjoyment of the right thus recognized is hampered in either law or in fact. In particular, though not exclusively, shall be regarded as de facto and de jure barriers to fair and equitable treatment any restriction to purchase and transport of raw materials and auxiliary materials, energy and fuel and means of production or operation of any kind, interference with the sale and transport of goods within the country and abroad, as well as any other measures having a similar effect.

The Contracting Parties shall consider sympathetically, within the framework of their national legislation, applications for entry and residence permits, labour and movement of nationals of one Contracting Party in respect of an investment in the territory or maritime zones of the other contracting party.

## **Article 4.**

Each Contracting Party shall, in its territory and in the maritime area to nationals or companies of the other contracting party as regards their investments and activities associated with such investments, treatment no less favourable than that accorded to its own nationals or companies or the treatment accorded to nationals or companies of the most favoured nation whichever is more favourable. In this connection, nationals who are authorised to work in the Territory and in the maritime area of either Contracting Party shall enjoy adequate physical facilities for the performance of their professional activities.

This treatment does not extend to the privileges which either Contracting Party accords to nationals or companies of any third State by virtue of its association or participation in a free trade area, customs union, Common Market or any other form of regional economic organization.

The provisions of this article shall not apply to tax matters.

## **Article 5.**

1. Investments made by the nationals and companies of either Contracting Party will be provided with full and comprehensive protection and security in the territory and in the marine zone of the other Contracting Party.

2. Neither Contracting Party will take any measures to expropriate or nationalize or any other measures aimed to deprive nationals or companies of the other Party directly or indirectly of their investments in their territory and in their marine zone, with the exception when it is in public interests and provided that such measures are not discriminatory or do not contradict special obligations.

Any potential property deprivation measures shall be accompanied by prompt and adequate compensation, the amount of which shall be equal to the actual value of the respective investment. This value shall be estimated in relation to the normal economic situation that has existed prior to threat of property deprivation.

This compensation, its amount and conditions of payment shall be determined no later than at the moment of property deprivation. This compensation shall be effectively enforceable, shall be paid without delay and be freely transferable. Interests shall be accrued at the respective market interest rate until the payment is made.

3. Companies or nationals of either Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of national emergency or revolt, occurring in the territory or maritime zones of the other

contracting party benefit, on the part of this latter, from a treatment no less favourable than that accorded to its own nationals or companies or to those of the most favoured nation.

## **Article 6.**

Each Contracting Party in the territory or maritime area in which the investments were made by nationals or companies of the other Contracting Party shall accord to such nationals or companies free transfer of:

- a) Profits, dividends, interests and other current income;
- b) Royalties arising out of intangible rights referred to in paragraph 1 (d) and (e) of article 1;
- c) Payments made for the reimbursement of loans contracted regularly;
- d) The proceeds of the sale of or the partial or total liquidation of the investment, including the value of the investment capital;
- e) Compensation for loss or dispossession provided for in article 5, paragraphs 2 and 3 above.

The nationals of either Contracting Party who have been authorised to work in the territory or maritime zones of the other Contracting Party in respect of an approved investment shall also be authorised to transfer their country of origin in a proportion appropriate remuneration.

The transfers referred to in the preceding paragraphs shall be effected without delay formally at the normal rate of exchange applicable on the date of transfer.

## **Article 7.**

If the legislation of either contracting party provides a guarantee for investments abroad, it may be granted within the framework of a case-by-case review, to investments made by companies or nationals of that Party in the territory or maritime zones of the other party.

Investments of nationals and companies of one Contracting Party in the territory or maritime zones of the other party may request the Security referred to in the preceding paragraph only if they have previously obtained accreditation of that other party.

## **Article 8.**

Any investment dispute between a Contracting Party and a national or company of the other Contracting Party shall be settled amicably between the two parties concerned.

If such a dispute cannot be settled within six months from the time at which it was raised by either party to the dispute, it shall be submitted at the request of either of the parties to arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington on 18 March 1965.

## **Article 9.**

If one of the Contracting Parties, by virtue of a guarantee given in respect of an investment in the territory or maritime zones of the other party makes its payment to one of its nationals or companies, it is thereby entered into the rights and claims of the national or company.

Such payments shall not affect the rights of the holder of the security to the resort to ICSID or to continue its actions brought before the Tribunal until the end of the procedure.

## **Article 10.**

Investments in respect of a particular undertaking of one of the Contracting Parties with respect to nationals and companies of the other Contracting Party shall be governed, without prejudice to the provisions of this Agreement, the terms of that commitment to the extent that it is more favourable provisions than those laid down in this Agreement.

## **Article 11.**

1. Disputes concerning the interpretation or application of this agreement should, if possible, be settled through diplomatic channels.
2. If, within a period of six months from the time at which it was raised by either contracting party, the dispute is not settled, it shall be submitted, at the request of either contracting party to an arbitral tribunal.
3. The Tribunal shall be constituted for each individual case as follows: each Contracting Party shall appoint one member and these two Members shall designate by common agreement, a national of a third State who shall be appointed Chairman of the Tribunal by both contracting parties. all members shall be appointed within two months from the date on which either of the two contracting parties informed the other contracting party of its intention to submit the dispute to arbitration.
4. If the periods specified in paragraph 3 above have not been made, either Contracting Party, in the absence of any other agreement, invite the Secretary General of the United Nations to make the necessary appointments. if the Secretary-General is a national of either Contracting Party or if he is otherwise prevented from exercising this function, the Under-Secretary-General the oldest and who is not a national of either Contracting Party shall make the necessary appointments.
5. The arbitral tribunal shall reach its decisions by a majority of votes. such decisions shall be final and enforceable automatically to the contracting parties.

The tribunal shall determine its own rules of procedure. it will interpret the award at the request of either Contracting Party. unless the Tribunal provides otherwise, in light of the particular circumstances, the expenses of the arbitral proceedings, including the business of the arbitrators shall be shared equally by the contracting parties.

## **Article 12.**

Each Party shall notify the other of the completion of the internal procedures required for the entry into force of this Agreement, which shall take effect one month after the date of receipt of the last notification.

This agreement is concluded for an initial period of ten years. it shall remain in force after the term unless one of the Parties denounces through diplomatic channels with one year notice.

On expiry of the period of validity of the present Agreement investments over which it was in force will continue to benefit from the protection of its provisions for a further period of twenty years.

For the Government of the French Republic:

Edmond Alphandery

Minister of Economy

For the Government of the Kyrgyz Republic:

Amangueldy Mouraliev

Chairman of the Committee of State for the Economy