

Agreement between the Swiss Federal Council and the Government of the Kyrgyz Republic on the Promotion and Reciprocal Protection of Investments

Preamble

The Swiss Federal Council and the Government of the Kyrgyz Republic,

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 of investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing the need to promote and protect foreign investment with the aim to promoting economic prosperity of both States;

Have agreed as follows:

Article 1. Definitions

For the purposes 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) companies, including corporations, partnerships, business associations and other organisations, constituted in accordance with the law of that Contracting Party and conducting substantive economic activities in the territory of the same Contracting Party;

(c) companies not constituted in accordance with the law of that Contracting Party but effectively controlled by natural persons or companies as defined in (a), respectively (b) of this paragraph.

(2) The term "investments" shall include every kind of asset in particular:

(a) movable and immovable property as well as any other property rights, such as mortgages, pledges and usufructs;

(b) shares, parts or any other kind of participation in companies;

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

(d) copyrights, industrial property rights (such as patents, industrial designs or models, trade or service marks, trade names, indications of origin), know-how and goodwill;

(e) any right conferred by law, contract or by virtue of any licences and permits granted pursuant to law to undertake an economic activity, including to search for, extract or exploit natural resources.

(3) The term "returns" means the amounts yielded by an investment and includes in particular, profits, interest, capital gains, dividends, royalty payments, management, technical assistance or other fees, and payments in kind.

(4) The term "territory" means the territory of either Contracting Party as defined by the laws of the Contracting Party concerned in accordance with international law.

Article 2. Scope of Application

The present Agreement shall apply to investments in the territory of one Contracting Party made in accordance with its laws and regulations by investors of the other Contracting Party, whether prior to or after its entry into force. It shall however not be applicable to claims arising out of events which occurred prior to its entry into force.

Article 3. Promotion, Admission

(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) Each Contracting Party shall facilitate, in accordance with its laws and regulations, the issuing of the necessary permits in connection with such investments, including authorizations required for the activities of consultants and experts.

Article 4. Protection, Treatment

(1) Each Contracting Party shall protect within its territory investments of 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.

(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 the latter is more favourable.

(3) If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, a customs union or a common market or by virtue of an agreement on the avoidance of double taxation, it shall not be obliged to accord such advantages to investors of the other Contracting Party.

Article 5. Free Transfer

(1) 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 amounts relating to these investments, in particular of:

(a) 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.

(2) For the avoidance of doubt it is confirmed that the right of an investor to freely transfer payments in relation to his investment is without prejudice to any fiscal obligation such an investor may have.

Article 6. 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, interest included, shall be settled in a freely convertible currency and paid without delay to the person entitled thereto without regard to its residence or domicile.

(2) The investors of one Contracting Party whose investments have suffered losses due to war or other armed conflict, state of national emergency, civil disturbance, or other similar event, 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 4, paragraph (2) of this Agreement

as regards restitution, indemnification or other settlement.

Article 7. 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 8. 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 six months from the date of request for consultations, the investor may submit the dispute either to the national jurisdiction of the Contracting Party in whose territory the investment was made or to international arbitration. In the latter event the investor has the choice between either of the following:

(a) an ad hoc arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(b) 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, opened for signature at Washington, on March 18, 1965, once both Contracting Parties have become members of this Convention.

(3) Both Contracting Parties declare their consent to submit the dispute to arbitration in accordance with paragraph (2) above.

(4) The Contracting Party which is party to the dispute shall not at any time during the procedures assert as a defence its immunity or the fact that the investor has received compensation under an insurance contract covering the whole or part of the damage or loss incurred.

(5) Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to international arbitration unless the other Contracting Party does not abide by and comply with the arbitral award.

(6) The arbitral award shall be final and binding on the parties to the dispute and shall be executed according to national law.

Article 9. Disputes between the Contracting Parties

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

(2) If both Contracting Parties cannot reach an agreement within six months after the beginning of the dispute between themselves, 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 a third 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 is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or 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 10. Other Commitments

(1) If provisions in the legislation of either Contracting Party or rules of international law entitle investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such provisions or rules shall to the extent that they are more favourable prevail over this Agreement.

(2) Each Contracting Party shall observe any obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

Article 11. Modifications

This Agreement may be amended or supplemented by mutual consent of the Contracting Parties.

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 legal requirements for the 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.

Done in duplicate, at Davos, on 29 January 1999, each in French, Kyrgyz, Russian and English, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Swiss Federal Council:

Pascal Couchepin

For the Government of the Kyrgyz Republic:

Nurkaly Isaev