

# Agreement on Promotion and Mutual Protection of Investments in the Member States of the Eurasian Economic Community

The Governments of the Member States of the Eurasian Economic Community, hereinafter referred to as Parties,

Guided by the Treaty establishing the Eurasian Economic Community of October 10, 2000

Realizing the goals and objectives of the Eurasian Economic Community, with the intention to create and maintain favorable conditions for investors of the Parties that are making investments in the territories of these states,

Recognizing that the promotion and reciprocal protection of investments on the basis of this Agreement will contribute to the development of integration processes, mutually beneficial trade, economic, scientific and technical co-operation of States Parties,

Seeking to promote the economic growth of the Parties,

Have agreed as follows:

## Article 1. Basic Concepts

The terms used in this Agreement have the following meanings:

a) "investor" - in relation to the state of each of the Parties:

Any natural person who is a national of one Party, to make investments in the territory of the other Party in accordance with the legislation of the latter;

Any legal person established (created) and registered on the territory of one Party to make investments in the territory of the other Party in accordance with the legislation of the latter;

b) "investment" - tangible and intangible assets invested by investors of one Party in the state objects of entrepreneurial activity on the territory of the other Party in accordance with the legislation of the latter, including:

Cash (money), securities and other property;

Right to engage in entrepreneurial activity, provided by the legislation of the Parties or under contract, including in particular the right to exploration, development, production and exploitation of natural resources;

Property and other rights having monetary value.

A change in the form in which investments are made or reinvested does not affect their character as investments provided that such change does not contradict the legislation of the recipient country;

c) "activities in connection with investments" - possession, use and (or) disposal of investments;

d) "income" - money received as a result of the investment, in particular, profits, dividends, interest, royalties, fees and other fees;

e) "recipient State" - State Party in whose territory the investments are made by investors of the other Party;

f) "laws" - laws and other regulations of the State Party;

g) "territory" - territory of a State Party, as well as its exclusive economic zone and continental shelf in respect of which it exercises sovereign rights and jurisdiction in accordance with international law and domestic law.

## Article 2. Investment Approval and Protection

1. Each Party shall create favorable conditions for the investment in the territory of its State by investors of the other Party and shall admit such investments in accordance with its laws and regulations.
2. Each Party shall ensure and provide, in accordance with the laws of its state, the protection in its territory of investments of investors of the other Party.

### **Article 3. Transparency of Laws**

Each Party shall ensure transparency and accessibility of the legislation of the state, regulating investment activities.

### **Article 4. Treatment of Investments**

1. Each Party shall ensure in its territory fair and equitable treatment to investments by investors of the other Party, and for the activities of such investors in connection with investments.
2. The regime referred to in paragraph 1 of this Article Mode, should be not less favorable than that provided by the Party in respect of investments and activities in connection with such investments of national investors or investors of any other State, including a non-party to this Agreement and should be provided at the choice of the investor choice, depending on which of these regimes, in his opinion, is the most favorable.
3. Each Party shall, in accordance with the laws of its state reserves the right to restrict the activities of foreign investors, as well as to apply and introduce other exceptions to the national treatment specified in paragraph 2 of this article.
4. The provisions of paragraphs 1 and 2 of this article with respect to the most favoured nation should not be construed as obliging a Party to extend to the investments and activities in connection with such investments of investors of the other Party, the benefits of any treatment, preference or privilege, which are available or can be provided in the future to that Party:

In connection with its participation in a free trade area, customs union, monetary union, common market or any similar economic integration entities or any international agreements, leading to the creation of such associations or unions;

On the basis of agreements to avoid double taxation or other agreements on taxation issues.

5. Without prejudice to the provisions of Articles 5, 6 and 9 of this Agreement, each Party shall have the right not to grant in respect of investments of investors of the other Party and their activities in connection with such investments treatment more favorable than that it accords, in accordance with the obligations adopted by the Agreement establishing the World Trade Organization on April 15, 1994, including the commitments to the General Agreement on Trade in Services (GATS), and in accordance with any multilateral agreement which may be achieved with the participation of the Parties and that will deal with that mode of investment.

Without prejudice to the provisions of article 14, paragraph 1, of this Agreement, the provision of paragraph 1 of this paragraph shall enter into force for each of the Parties on the date on which it undertakes obligations under the Agreement Establishing the World Trade Organization, including obligations under the GATS, or on the date on which the multilateral agreement referred to in paragraph 1 of this paragraph enters into force.

### **Article 5. Damages**

Investors have the right to compensation for damage to their investment and income as a result of civil unrest, hostilities, revolution, insurrection, state of emergency or other similar circumstances in the territory of the recipient state. At the same time, such investors shall be accorded treatment no less favorable than that which the Party of the recipient State grants to national investors or investors of any other State, including a non-party to this Agreement with respect to measures taken by the Party in connection with the recovery of such damages.

### **Article 6. Guarantees of the Rights of Investors In Case of Expropriation**

1. Investments of investors of the State of one Party made in the territory of the other Party, and the income of such investors may not be subjected to direct or indirect expropriation, nationalization and other measures tantamount to expropriation or nationalization (hereinafter referred to as expropriation), except in cases when such measures are taken in the public interest established by the legislation of the recipient of the state order, are not discriminatory and are accompanied by payment of prompt, adequate compensation.

2. The compensation referred to in paragraph 1 of this Article shall correspond to the market value of the expropriated investment and income investors on the date immediately preceding the date of their actual expropriation, or the date when it became common knowledge about the impending expropriation.

3. The compensation referred to in paragraph 1 of this Article shall be paid without delay, within the period prescribed by the legislation of the recipient state, but not later than three months from the date of expropriation, in a freely convertible currency and in accordance with Article 7 of this Agreement is freely transferred abroad from the territory the recipient state.

In case of delay in payment of compensation as from the date when the payment is to be paid in accordance with the first paragraph of this point, before the actual payment of the payment date on the amount of compensation accrued interest calculated at the rate of the national inter-bank market in the actual provision of loans in US dollars for up to 6 months or in the manner determined by agreement between the investor and the Party of the recipient state.

## **Article 7. Use of Income, Transfer of Remittances (money) and Payments**

1. The Party of the recipient State shall guarantee to investors of the other Party, after fulfillment of all tax and other measures stipulated by the legislation of the recipient state's obligations:

The right to use and dispose of the income obtained as a result of investment for any purpose not prohibited by the legislation of the recipient country;

The right to freely transfer remittances (money) and payments related to investments to any country, at the discretion of the investor, in particular:

Income;

Funds in repayment of loans and credits recognized by the Parties as investments;

Funds received by the investor in connection with the partial or complete liquidation of the business entity or the sale of investments;

Funds received by the investor in damages in accordance with Article 5 of this Agreement, and the compensation provided for in Article 6 of this Agreement;

Wages and other remunerations received by investors and nationals of other Parties who are allowed to work in connection with investments in the territory of the recipient state;

Royalties and licenses arising from the intellectual property rights to be paid to investors.

2. The transfer of funds (money) and the implementation of the payments referred to in paragraph 1 of this Article shall occur without undue delay in the currency in which the investment was originally made, or in any other freely convertible currency. The conversion of such funds and payments are made at the exchange rate applicable on the territory of the recipient state on the date of transfer of funds (money) and payments, made in compliance with the requirements of currency legislation of the recipient country.

## **Article 8. Transfer of Investor Rights**

A party or its designated agency, which made a payment to the investor of its State on the basis of guarantees against non-commercial risks in connection with the investment of such investor in the territory of the recipient state, will be able to exercise, in order of subrogation, the investor's rights to the same extent as the investor himself. These rights shall be exercised in accordance with the laws of the recipient country.

## **Article 9. Settlement of Disputes between a Party and an Investor**

1. Disputes between a recipient State Party and an investor of the other State Party arising in connection with the investment of an investor in the territory of the recipient state, including disputes relating to the amount, conditions, or order the payment of the amounts received as damages in accordance with Article 5 of this Agreement and the compensation provided for in article 6 of this Agreement, or the order of payment and transfer of funds (money) provided for in article 7 of this Agreement shall be resolved as far as possible by negotiations.

2. If the dispute cannot be resolved by negotiation within six months from the date of written notification to any of the parties to the dispute about its resolution by negotiation, then it may be referred by the investor for consideration:

- a) The courts of the recipient state competent to consider relevant disputes;
  - b) International Commercial Arbitration before the Chamber of Commerce of any state, agreed to by the the parties to the dispute;
  - c) an "ad hoc" arbitral tribunal, which, unless the parties to the dispute agree otherwise, shall be established and act in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);
  - d) the International Centre for Settlement of Investment Disputes, established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965, to resolve the dispute in accordance with the provisions of the Convention (provided that it has entered into force for both States parties to the dispute), or in accordance with the Additional Facility rules of the International Centre for Settlement of Investment Disputes (if the Convention has not entered into force for one or both of the States parties to the dispute).
3. Any arbitral award issued on a dispute in accordance with this article is final and binding on the parties to the dispute. Each Party undertakes to ensure the implementation of such a decision in accordance with the laws of its state.

## **Article 10. Settlement of Disputes between the Parties**

1. Disputes between the Parties relating to the interpretation and (or) the application of this Agreement shall be settled, if possible, through consultations and negotiations by the concerned Parties.
2. If the dispute cannot be settled through consultations and negotiations within six months from the date of a formal written request for their conduct, directed by one of the interested Parties to the other interested parties, and in the absence of any other agreement between the concerned Parties on how to resolve the dispute, any of such parties may refer the dispute to the Court of the Eurasian Economic Community.
3. The Court of the Eurasian Economic Community shall decide the dispute in accordance with its rules.

## **Article 11. Consultations**

The Parties, at the request of any of them, shall hold consultations on matters relating to the interpretation or application of this Agreement.

## **Article 12. Application of the Agreement**

This Agreement shall apply to all investments made by investors of the State of one Party in the territory of the other Party since January 1, 1992. This Agreement shall not apply to disputes that have arisen prior to its entry into force.

## **Article 13. Changes to the Agreement**

By agreement of the Parties, this Agreement may be amended in writing, which are executed in separate protocols.

## **Article 14. Entry Into Force and Duration of the Agreement**

1. This Agreement shall enter into force on the date of receipt by the depositary of the last written notice of the implementation by the signatories of the parties to the third parties of the internal procedures necessary for the entry into force of this Agreement.

The Depositary of this Agreement is the Integration Committee of the Eurasian Economic Community.

2. Either Party may withdraw from this Agreement by sending a written notice to the depositary. The validity of this announcement is terminated in respect of this Party upon the expiration of six months from the date of receipt by the depositary of such notification.

3. In respect of investments made prior to the date of termination of this Agreement and falling under its scope, the provisions of this Agreement will remain in force for the next ten years after this date.

The provision of the first paragraph of this clause shall also apply in the event of termination of this Agreement in respect of one or several Parties.

Done in Moscow on December 12, 2008 in one original copy in Russian. The original copy is kept in the Integration Committee of the Eurasian Economic Community, which shall send to each of the signatories to this Agreement, its certified copy.

For the Government of the Republic of Belarus

Prime Minister of the Republic of Belarus - SS Sidorsky

For the Government of the Republic of Kazakhstan

The Prime Minister of the Republic of Kazakhstan Masimov KK

For the Government of the Kyrgyz Republic

Prime Minister of the Kyrgyz Republic - Chudinov IV

For the Government of the Russian Federation

Russian Prime Minister - Vladimir Putin

For the Government of the Republic of Tajikistan

The Prime Minister of the Republic of Tajikistan - Akilov AG