

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF TAJIKISTAN AND THE GOVERNMENT OF MONGOLIA ON PROMOTION AND MUTUAL PROTECTION OF INVESTMENTS**

The Government of Tajikistan and the Government of Mongolia, hereinafter referred to as "Contracting Parties", Desiring to reinforce economic cooperation for the mutual benefit of both countries and to ensure fair and equal conditions for investors of one Contracting Party in the territory of the other Contracting Party, recognizing that the promotion and reciprocal protection of investments on the basis of this agreement will stimulate business initiative, the circulation of capital and technology between the two countries and contribute to the economic development of the Contracting Parties have agreed as follows:

## **Article 1. Definitions**

Pursuant to this Agreement:

1. The term "investment" means any article asset established or acquired by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the law of the Contracting Parties, including in particular, but not exclusively:

(A) movable and immovable property or any property rights such as security of property obtained as a result of seizure for debt, contractual obligations, the lease agreement (lease), usufruct and other rights;

(B) intellectual property rights, such as the patented objects, copyright, technical process, trademark, industrial design, trade names, trade secrets and business reputation of the firm;

(C) the right to engage in economic activities, including the right to the concession, which is expressed in the exploration, development, extraction or exploitation of mineral, obtained under the law or the contract.

Legal changes in the form in which assets are invested or reinvested, will not affect their character as an investment.

2. The term "income" means the amount obtained as a result of the investment profit. Includes, in particular, but not exclusively: profits, dividends, interest payments, royalties, capital gains, royalties, license and commission fees.

3. The term "investor" means:

(A) any individual possessing the nationality of a State or another Contracting Party resident in its territory;

(B) any legal entity established in accordance with the legislation of one Contracting Party located in the territory, and permitted by its legislation to invest in the territory of the other Contracting Party.

4. The term "territory" used in relation to:

(A) the Republic of Tajikistan - Tajikistan's state territory, including the geographic area over which Tajikistan is in accordance with its national law and international law, sovereign rights or jurisdiction for the purpose of exploration and exploitation of natural resources of these areas;

(B) of Mongolia - Mongolia.

5. The term "Authorized institution" means the agency representative, guarantor, the creditor of one of the Contracting Parties.

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

1. Each Contracting Party shall, in accordance with its laws and regulations to encourage and create favorable conditions for

investments of investors of the other Contracting Party.

2. Each Contracting Party shall provide in its territory favorable treatment to investments of investors of the other Contracting Party, as well as safety and security.

3. Each Contracting Party shall not restrict, without reasons, arbitrarily or discriminatorily management, maintenance, use, collection and transfer in its territory investments of investors of the other Contracting Party.

4. Each Contracting Party shall not impose mandatory measures on investments of investors of the other Contracting Party in respect of the acquisition of the material means of production, operation, transport, trade in goods within the law.

5. Each Contracting Party shall, within the national legislation of their states will favorably consider applications for the necessary permits with respect to investments in

Its territory, including permission for the hiring of administrators, managers, professionals and technical staff at the option of investors.

### **Article 3. The Investment Regime**

1. Each Contracting Party shall ensure in its territory to investors of the other Contracting Party and activities in connection with investments treatment no less favorable than that granted to its own investors or investors of a third State.

2. This mode does not apply to:

a) participation in a free trade area, customs or economic union, monetary union or the international agreement establishing such unions or other forms of regional cooperation to which either Contracting Party is or may become;

b) advantages which either Contracting Party shall accord to investors of other countries on the basis of agreements to avoid double taxation or other tax arrangements.

### **Article 4. Transparency**

Each Contracting Party shall ensure, by publication or in any other way access to adoption of legal acts, including those in force international agreements to which it is, and that may have an impact to the investments by investors of the other Contracting Party.

### **Article 5. Investment Guarantee**

1. Investments of investors of either Contracting Party within the territory of the other Contracting Party shall not be expropriated, nationalized or subjected to measures of expropriation on equal consequences. Such measures are taken in the public interest and are produced:

-in accordance with the legislation;

-without discrimination;

-with the payment of adequate compensation without delay.

2. The amount of compensation is determined at the time of the expropriation of the investment or when the expropriation or the threat of it was officially known, whichever is the earlier.

3. The amount of compensation shall be calculated on the basis of current market prices and / or substantiated estimates confirmed by an auditor or audit firm, and freely translated from the territory of one Contracting Party in the territory of the other Contracting Party.

4. Compensation shall be paid in the currency in which the investment or, with the consent of the investor, in any other freely convertible currency have been implemented.

### **Article 6. Reparation**

Investors of one Contracting Party whose investments in the territory of the other Contracting Party has suffered damage as a result of war, armed conflict, a state of emergency, civil strife or similar circumstances in compensation incurred as a result of the foregoing circumstances, the damage shall be accorded treatment no less favorable than that applied in regard

to third countries investors.

## **Article 7. Transfers**

1. Each Contracting Party shall allow without delay any transfer fees associated with an investment in a freely convertible currency.
2. All payments under this Agreement (other than internal payments) to be made in freely convertible currency in accordance with the laws of the Contracting Parties.
3. The right of the investor to the transfer of payments related to its investments can be implemented taking into account the payment of taxes, stipulated by the legislation of the Contracting Parties.

## **Article 8. Subrogation**

1. If a Contracting Party or any institution authorized by it will make payments to any of the investors under a guarantee or insurance contracts concluded in connection with the investment, the other Contracting Party will be recognized by the assignment, transfer (subrogation), the first Contracting Party or its authorized institution of any rights or requirements specific to the investor.
2. subrogate the rights of the investor or the requirements will not exceed the original rights or claims of the investor.

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

1. Disputes between one Contracting Party and an investor of the other Contracting Party in relation to the investment will be solved through negotiations.
2. If the negotiations will not be completed in a solution within six months from the date of the written offer to start negotiations, the parties to the dispute may proceed as follows:
  - a) If the dispute concerns the obligations under Articles 5, 6 and 7 of this Agreement, it is at the request of the investor be submitted for decision to the arbitral tribunal;
  - b) if the dispute is not related to the point a) of paragraph 2 of this article, with the consent of the parties to the dispute, he transferred to the arbitration court.
3. The arbitral tribunal shall be established for each individual case. If the parties to the dispute do not agree otherwise, each of them shall appoint one arbitrator. Appointment of arbitrators shall elect a President, who will be a citizen of a third State.

The arbitrators shall be appointed within two months from the date of receipt of the dispute transmission requirements for the consideration of the court of arbitration and the chairman - in the next two months.
4. If the periods specified in paragraph 3 of this article have not been met, either party to the dispute may, having no other arrangements, invite the President of the Arbitration Court of the International Chamber of Commerce in Paris to make the necessary appointment. If the President is unable to discharge the said function or is a national of a Contracting Party applies similar provisions of paragraph 5 of Article 9 of this Agreement.
5. If the parties have not agreed otherwise, the arbitral tribunal shall establish its own rules of procedure. The decisions are final and binding. Each Contracting Party shall ensure the recognition and enforcement of arbitral awards.
6. Each party to the dispute shall bear the expenses for the maintenance of its member of the tribunal and in accordance with their own interests in the arbitration procedure, the costs of the chairman and other expenses they will bear equal parts of both parties to the dispute.
7. A Contracting Party party to the dispute, may not at any stage of the arbitration procedure or execution of the court to refer to the fact that the investor will receive as a result of the contract of insurance compensation covering the whole or part of the loss caused by the loss.

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

1. Disputes between the Contracting Parties concerning the interpretation and application of the provisions of this

Agreement shall be settled through diplomatic channels.

2. If the Contracting Parties will not reach agreement within six months of the date of the dispute, the dispute at the request of either Contracting Party will be submitted to the arbitral tribunal consisting of three members. Each Contracting Party shall appoint one arbitrator, and they, in turn, elect the chairman, who shall be a citizen of a third country maintains diplomatic relations with the states of both Contracting Parties.

3. If either Contracting Party fails to appoint an arbitrator and does not agree with the invitation of the second Contracting Party shall cause such 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 can not reach agreement on the chairman of the selection and within two months from the date of their appointment, he shall be appointed at the request of either Contracting Party by the President of the International Court of Justice.

5. If, in the cases provided for in paragraphs 3 and 4 of this Article, the President of the UN International Court of Justice by virtue of any of the reasons can not perform the said function or if he is a national of one Contracting Party, the appointment shall be made Vice-President. If he for any reason can not fulfill the corresponding functions, the appointment will be made by the most senior rank of judge of the International Court of Justice who is not a citizen of any of the Contracting Parties.

6. The arbitral tribunal shall decide by majority vote.

7. Each Contracting Party shall bear the costs of the member of his court, and in accordance with its share in the arbitration procedure, the costs of the chairman and other costs borne by the Contracting Parties in equal parts.

8. The decisions of the tribunal are final and binding for each Contracting Party.

## **Article 11. Application of the Agreement**

The Agreement applies to investments existing at the time of its entry into force, as well as to investments, followed after the Agreement enters into force.

## **Article 12. Entry Into Force**

1. This Agreement shall enter into force on the date of receipt through diplomatic channels of the last written notification on fulfillment by the Contracting Parties of internal procedures necessary for its entry into force.

2. This Agreement shall remain in force for 5 years after entry into force. After this period it shall be automatically extended for another five years unless one Contracting Party notifies the other Contracting Party, at least 12 months before the expiry of the period of its intention to terminate this Agreement.

3. By mutual agreement of the Contracting Parties to this Agreement may be amended and supplemented, of separate protocols, which form an integral part of this Agreement and shall enter into force in the manner prescribed in paragraph 1 of this article.

4. In respect of investments made prior to the termination date of this Agreement, and subject to, the provisions of all other parts of this Agreement shall remain in force for a further 5 years after its termination date.

Done March 27, 2009 in the city of Ulaanbaatar in two originals, each in the Tajik, Mongolian and Russian languages. In case of divergence in the interpretation of the provisions of this Agreement as a basis for the text in Russian will be accepted.

For the Government of Tajikistan

For the Government of the Republic of Mongolia