

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MACEDONIA AND THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Republic of Macedonia and the Government of the Republic of Kazakhstan, hereinafter referred to as the "Parties",

RECOGNIZING the necessity to protect the investments of investors of one Party in the territory of the other Party on a non-discriminatory basis,

DESIRING to promote greater economic co-operation between the States, with respect to investments made by investors of one Party in the territory of the other Party,

ASSUMING that this Agreement to be accorded to such investment will stimulate the flow of private capital and the economic development of the two States,

AGREEING that a stable framework for investment will maximize effective utilization of economic resources and improve living standard,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" means any property and property rights of investors of one Party in the territory of the other Party in accordance with the national legislation of the State of the latter Party and shall include in particular, though not exclusively:

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

b) reinvestment of the returns;

c) shares, stocks, debentures of companies and other forms of participation in companies;

d) claims to money and rights in accordance with the contract having financial value and loans directly related to certain investments;

e) intellectual property rights, such as patents, copyrights, trademarks, industrial patterns, business names, geographical indications, technical processes, know-how and goodwill;

f) any rights of financial character provided according to the legislation of the State of the Party or according to the contract, including the concessions provided according to the national legislation of the State of the Party, including search, process extraction and utilization of natural resources.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as an investment, provided that such alterations are made according to the national legislation of the State of the receiving Party.

2. The term "investor" means natural or legal person of one Party who makes an investment in the territory of the State the other Party in accordance with the national legislation of the State of the receiving Party and provisions of this Agreement:

(a) the "natural person" means a national of the State of either Party and who is competent to make investments in accordance with the national legislation of his State;

(b) the "legal person" means legal person established and registered in accordance with the national legislation of the State of either Party.

3. The term "returns" shall mean amounts yielded by investments and in particular, though not exclusively, include profits, dividends, royalty, interests and other fees.

4. The term "territory" shall mean:

1) with respect to the Republic of Kazakhstan:

the territory of the Republic of Kazakhstan within the land, sea and air borders, including land, water, subsoil and airspace for which the Republic of Kazakhstan exercises sovereignty and expands jurisdiction in accordance with the standards of its national legislation and international law;

2) with respect to the Republic of Macedonia: the territory of the Republic of Macedonia, including land, water and airspace, over which Republic of Macedonia exercises, in accordance with international law, sovereign rights and jurisdiction.

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

1. Each Party shall encourage and create favorable conditions for investors of the other Party to make investments in its territory and shall admit such investments in accordance with the national legislation of its State.

2. Each Party shall provide investors of either Party fair and equitable treatment, and also full protection.

3. Neither Party shall interfere by arbitrary or discriminative measures in its territory with the expansion of activities, management, technical service, maintenance, usage, possession and sale, or other arrangements of investments by investors of the other Party.

## **Article 3. Treatment of Investments**

1. Each Party shall accord to investors of the other Party and their investments treatment which is not less favorable than that which it accords to national investors and/or investors of any third State and their investments, whichever is more favorable to the investors, with regard to expansion, management, maintenance, use, possession and sale or other disposal of their investments.

2. The provisions of this Agreement shall not be construed so as to oblige one Party to extend to the investors of the other Party and their investments the benefit of any treatment, preference or privilege by virtue of existing or future:

(a) free trade area, customs union, common market, economic or monetary union or other similar regional or international economic integration treaties, including regional or international treaties on labor market, in which the State of either Party is or may become a member;

b) international treaty or national legislation of the State of either Party, wholly or generally related to the taxation, or

c) multilateral international treaty wholly or partially related generally to investments.

## **Article 4. Expropriation**

1. The Party shall not expropriate or nationalize investments: of investors or take any measures having equivalent effect to expropriation and nationalization (hereinafter referred to as "expropriation") in its territory, except when the measures are undertaken in order to protect public interests, on a non-discriminatory basis, in accordance with due process of national legislation of the State of the receipt Party, and accompanied by payment of prompt, adequate and effective compensation in accordance with the national legislation of the State of the Party in which territory the expropriation was made. :

2. Such compensation shall correspond to the market value of the investment expropriated immediately before expropriation or impending expropriation became publicly known. The amount shall be defined in accordance with standard principles of valuation.

3. The compensation should be effectively realizable and should be paid without any restriction or delay. The compensation shall also include the interest from the date of expropriation until the date of payment, calculated according to the national legislation of the State of the Party in which territory the investment has been expropriated.

4. Without prejudice to Article 9 of this Agreement, the investor whose investments are expropriated shall have a right to a

prompt review or assessment of his investments in accordance with the principles set out in this Article by judicial or other competent authorities of the State of the Party in which territory the expropriation was made.

## **Article 5. Compensation of Losses**

1. Where investments of investors of one Party suffer losses owing to war or other armed conflict, revolt, riot, rebellion, State of national emergency and insurrection in the territory of the other Party, such investors shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other settlement, which shall not be less favorable than that accorded to its own investors or to investors of any third state, whichever is more favorable for the investor.

2. Without prejudice to paragraph 1 of this Article, investor of one Party who suffer losses in the territory of the other Party in consequence of:

(a) requisition of his investments wholly or partly by the armed forces or the State authorities of the latter Party, or

(b) destruction of his investments wholly or partly by the armed forces or the State authorities which was not required by the necessity of the situation,

shall be accorded by the latter Party compensation or restitution, which in either case shall be prompt, adequate and effective in accordance with paragraphs 1-3 of the Article 4 of this Agreement.

3. The investor whose investments suffer losses in accordance with paragraph 2 of this Article shall have a right to a prompt review or assessment of his investments in accordance with the principles set out in this Article by the judicial or other competent authorities of the State of such Party.

## **Article 6. Free Transfers**

1. The Party in which territory investments were made by investors of the other Party shall ensure for these investors in accordance with the national legislation of its State free transfers of payments related to these investments. Such transfers shall include in particular, though not exclusively:

(a) the initial capital and additional amounts to maintain or increase investments;

(b) proceeds from the sale or liquidation of all or any part of investments;

(c) gains, profits, interests, dividends and other incomes;

(d) the sums demanded for payment of expenses which arose from investment activity, such as payment on loans, payments for management, royalties or other similar expenses;

(e) payments of compensation under Articles 4 and 5 of this Agreement;

(f) earnings and other remuneration of personnel engaged in connection with investments in the territory of the other Party

2. Each Party shall ensure that the transfers under paragraph 1 of this Article are made without any restrictions and delay in accordance with the national legislation of its State in a freely convertible currency, at the market rate of exchange prevailing on the date of transfer and shall be made immediately, provided that all financial obligations towards the Party have been fulfilled.

3. In case of a delay in the transfer that is a consequence of actions of the Party in which territory investments are made, transfer should include the interest from the date of the requirement of transfer until the date of the actual transfer, paid by such Party, calculated according to the national legislation of the State of the Party from which territory the transfer is being made.

4. Notwithstanding paragraphs 1-3 of this Article either Party may delay transfer through the equitable and non-discriminatory application of national legislation of their own State, concerned to:

a) implementation of the corresponding tax obligations;

b) protection of the rights of creditors;

c) criminal or administrative offense;

d) orders or judgments in judicial proceedings;

e) protective measures for the necessary period of time which can be accepted under exceptional circumstances, such as serious difficulties with the balance of payments and external financial difficulties or threats for a receiving Party;

provided that application of such national legislation of States of the Parties shall not be used as means of avoidance from obligations of the Parties under this Agreement.

## **Article 7. Subrogation**

1. If the Party or its authorized body makes payments according to indemnity, guarantee or an insurance contract given in respect of investments of the investor in the territory of the other Party, the latter Party shall recognize assignment of any rights and claims of such investor to the first Party or the body defined by the Party by virtue of subrogation to the same extent as its predecessor.

2. In the case of subrogation as defined in paragraph 1 of this Article, the investor shall not be entitled to require a claim, unless he is authorized to do so by the Party.

3. The subrogated rights shall not exceed the original rights of the investor.

## **Article 8. Disputes between an Investor and a Party**

1. Any dispute arising directly from investments between a Party and an investor of the other Party shall, if possible, be settled between the Parties to the dispute through negotiations.

2. If the dispute cannot be settled amicably within six months of the date of receipt of a written request by one of the Parties to the dispute, such dispute may upon the request of the investor or one of the Parties be submitted to:

(a) the competent courts of the State of the Party in which territory the investment is made, or

(b) the International Centre for Settlement of Investment Disputes (hereinafter referred to as "Centre"), established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington D.C. on 18 March 1965, if States of either Party are parties of this Convention, or

(c) any arbitral tribunal ad hoc; which, shall be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. Any arbitration under this article shall, at the request of any party to the dispute, be held in a State that is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted on June 10, 1958 (hereinafter referred to as "New York Convention"). For the purposes of observance of provisions of the article 1 of the New York Convention, claims submitted to arbitration under this article shall be considered to arise out of a commercial (trade) relations or agreements.

4. The award adopted according to this Article shall be final and binding for parties to the dispute and shall be enforced from the date specified in such award in accordance with the national legislation of the Party, in which territory such award is enforced by the competent body of the Party.

## **Article 9. Disputes between the Parties**

1. Disputes between the Parties concerning the interpretation or application of this Agreement shall be settled by negotiations and consultations.

2. If the dispute cannot be settled by negotiations and consultations within 6 (six) months from the date, when such consultations has been requested in the written form by either Party, it shall, at the request of either Party, be submitted to the consideration of the arbitral tribunal.

3. Such arbitration tribunal shall be established for each individual case as follows: Each Party shall appoint one member of arbitration within 2 (two) months after receipt of the request for arbitration. Then these two members of the arbitral tribunal agree upon the national of a third State as the Chairman, who after the approval by both Parties shall be appointed within 4 (four) months from the date of appointment of the other two members of the arbitral tribunal.

4. If, within the periods specified in paragraph 3 of this Article, the necessary appointments have not been made, any Party, in the absence of any other agreement, may invite the President of the UN International Court of Justice to make the necessary appointments. If the President of the UN International Court of Justice is a national of one of the States of the Parties, or if he/she is otherwise prevented from discharging the said function, the member of the UN International Court of

Justice next in seniority, and who is not a national of the State of one of the Parties, or otherwise prevented from discharging the said function, shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decision by a majority of votes. The decision of the tribunal shall be final and binding for both Parties. Each Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by both Parties. The tribunal may in its award determine another distribution of costs. In all other respects the arbitral tribunal shall establish its own rules of procedure.

6. Issues, referred to as disputes specified in paragraph 1 of this article, shall be settled in accordance with provisions of this Agreement and the recognized principles of the international law.

## **Article 10. Permissions**

1. Each Party shall, in its territory according to the national legislation of its State without a delay, provide the permissions necessary for implementation of investments by investors of other Party.

2. Each Party according to the national legislation of its State shall provide temporary entrance and stay, and provide with any confirming documentation necessary for individuals from abroad who are employed as executives, managers, experts or technical personnel in regard to investments of the investor of the other Party, and being essential to the enterprise until these persons correspond to requirements of this paragraph.

## **Article 11. Application of other Rules**

If provisions of the national legislation of the State of any Party or the international treaties to which both States are Parties at the same time, contain rules, whether general or specific, entitling investments of investors of the other Party to a treatment more favorable than is provided for by the present Agreement, such rules shall to the extent that they are more favorable prevail over this Agreement.

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

This Agreement shall apply to all investments made by investors of either Party in the territory of the State of the other Party prior to as well as after the entry into force of this Agreement, but shall not apply to any investment dispute or claim that has arisen and (or) has been settled before entry into force of this Agreement.

## **Article 13. General Exceptions**

1. Nothing in this Agreement shall be interpreted as interfering to commit by the Parties of the actions necessary for protection of national security or measures necessary for maintenance of a public order, or measures in line with their obligations under the United Nations Charter for maintenance of international peace and security, provided that application of such measures would not mean unconditioned or unreasonable discrimination by the Party, or the latent restriction of investments.

2. Provisions of this article cannot be applied to the subparagraph (e) paragraph 1 of the article 6 of this Agreement.

## **Article 14. Transparency**

Provisions of this Agreement shall not oblige the Party to provide or allow access to any confidential information, including information concerning investors and their investments the disclosure of which would disturb the application of right or would contradict its right of protecting confidentiality or would cause damage to legitimate interests of certain investors.

## **Article 15. Consultations**

The Parties, at the initiative of either Party, shall hold consultations on any issue concerning interpretation and application of this Agreement. The place and time of holding consultations shall be agreed by competent authorities of the States of the Parties through diplomatic channels.

## **Article 16. Amendments and Additions**

By the mutual consent, the Parties may make amendments and additions to this Agreement.

## **Article 17. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force on the date of the receipt through diplomatic channels of the latter written notification informing that the internal procedures required for the entry into force of this Agreement have been completed by the Parties.

2. This Agreement shall remain in force for the period of ten (10) years and shall be automatically prolonged thereafter for the next ten year periods unless, one year before the expiration of the initial or any subsequent ten (10) years period, either Party notifies in writing through diplomatic channels the other Party of its intention to terminate the Agreement. The Agreement shall cease to be effective one year after the receipt of the notice of its termination by the other Party.

3. In respect of investments made prior to the termination of this Agreement, the Articles 1-16 of this Agreement shall continue to be effective for a period of ten years from the date of termination of this Agreement.

Done at Astana on 02 of July 2012 in duplicate in the Macedonian, Kazakh, Russian and English languages, all texts being equally authentic. In case of any divergence of interpretation of the provisions of this Agreement the Parties refer to the text in English.

FOR THE GOVERNMENT OF THE REPUBLIC OF MACEDONIA

FOR THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN