Agreement Between the Government of the Republic of Serbia And The Government of the Republic of Kazakhstan on Reciprocal Promotion and Protection of Investments

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

Desiring to encourage the citizens of its states to invest capital, technology and knowledge in their territories;

Wishing to establish and maintain favorable conditions for mutual investment;

Convinced that the promotion and protection of investments will contribute to further development of entrepreneurial activity, and, thus, will contribute significantly to the. development of economic relations between the Parties;.

Agreed as follows:

Article 1. Definitions

For purposes of this Agreement:

1. The term "investments" means any kind of assets established or acquired by an investor of one Party in the territory of another Party in accordance with national legislation of the state of the latter Party and, in particular but not exclusively, includes:

a) movable and immovable property and other proprietary rights, such as mortgage, pledge, surety, usufruct and other rights;

b) equity participation in companies;

c) bonds and equities, as well as other types of securities;

d) claims to money or to any performance having an economic value, in accordance with national legislation;

e) intellectual property rights (such as copyright and neighbouring rights, patents, industrial designs or models, trademarks), as well as. goodwill, technical processes and knowhow;

f) concessions granted in accordance with the national legislation of the state of the Party in which territory investments are made.

Any alteration in the form in which assets are invested or reinvested shall not affect their character as investments.

2. The term "returns" refers to the amounts yielded by investments and, in particular but not exclusively, includes profits, capital gains, dividends, interest, royalties and fees.

3. The term "investor" means:

a) a natural person having the nationality of the state of one of the Parties and malting investments on the territory of the other Party;

b) a legal person, registered, incorporated or otherwise organized in accordance with the national legislation of one of the Parties and carrying out investments in the territory of the other Party.

4. The term "territory" means:

Concerning the Republic of Serbia: The area over which the Republic of Serbia exercises, in accordance with its national laws

and regulations and international law, sovereign rights and jurisdiction.

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

Article 2. Promotion and Protection of Investments

1. Each Party shall promote and create favorable conditions for investors of another Party to invest in its territory and admits such investments in accordance with the national legislation of the state.

2. Investments of investors of each Party shall be accorded a fair and equal treatment and full protection and security in the territory of the other Party. Neither of the Parties shall worsen by unreasonable or discriminatory measures, management, servicing, use, exercise or other disposal of investors' investments of the other Party on its territory.

3. Each Party shall create favorable conditions for granting of visa and work permits in its territory required for the nationals of the other Party to carry out their activities related to investments.

4. Reinvestment of profits from investments, which are placed in accordance with the national legislation of the state of the other Party in which territory the initial investment was made, enjoys the same protection as the original investment.

Article 3. National Treatment and Most Favoured Nation Treatment

1. Each Party in its territory shall provide the investors and investments of the other Party the treatment no less favorable than that which it provides its own investors and investments or investments and investors of any third state, whichever is more favorable.

2. The provisions of paragraph 1 of this article should not be construed as obliging one Party to provide the investors of the other Party the treatment advantage, preference or privilege which the latter Party may grant to any third state in accordance with:

a) any international agreement on membership in the economic integration, customs union, free trade zone, monetary union or other similar international treaty establishing such association or an international treaty establishing other forms of regional cooperation, in which either Party is or may become a participant, or

b) any international agreement, in whole or in part relating to taxation.

3. The provisions of paragraphs 1 and 2 of this Article shall not be construed to permit one Party to apply any other ways of resolving the dispute with the investor of the other Party, except as provided in Article 9 of this Agreement.

Article 4. Compensation for Losses

1. Investor of the Party, whose investments have suffered losses due to war or other armed conflict, emergency, rebellion, insurrection or riot in the territory of the other Party is provided the regime no less favorable than that which the latter Party provides its own investors or investors of any third state in respect to restitution, indemnification, compensation or any other solution.

2. Without prejudice to paragraph 1 of this Article, the investors of the Party, which have suffered losses in the territory of the other Party during any of the situations referred to in this paragraph resulting from:

a) requisitioning of their property, conducted by the authorities of the other Party, or

b) the destruction of their property by the authorities of the other Party, which is not caused by military action or the necessity of the situation,

is given the fair and appropriate compensation for losses incurred during the requisition or as a result of the destruction of their property.

Article 5. Expropriation

1, Neither of the Parties shall expropriate or nationalize directly or indirectly the investors' investments of the other Party or take any similar action (hereinafter - the expropriation), excepting the actions taken:

a) for a public purposes;

b) in non-discriminatory way;

c) in accordance with due process at law;

d) with the payment of prompt, adequate and effective compensation.

Such compensation shall correspond to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, depending on what happens earlier, and shall include interest based on commercial rate established on a market basis for deposits in the currency of payment from the date of expropriation until the date of actual payment of compensation and shall be fully realizable and freely transferable.

2. The investor, whose investments are expropriated has a right for prompt reviewing of his case and evaluating of his investment by judicial or other competent authorities in accordance with the principles set forth in this Agreement and the national legislation of the state in which territory the investments were made.

Article 6. Transfers

1. Each of the Parties in accordance with the national legislation of its state shall provide the investors of the other Party after fulfillment of all tax obligations by them the transfer to and from their territory the amounts related to their investment and remitted payments related to investments. Such payments include particularly, but not limited to:

a) investment and additional funds to maintain or increase investments;

b) profit;

c) amortization of loans issued by the companies;

d) income from the total or partial liquidation, or sale of investments;

e) compensation, payable in accordance with Articles 4 and 5 of this Agreement;

f) payments arising from the settlement of the dispute under Article 9 of this Agreement;

g) the unused charges of the investors' employees who are the nationals of the state of one Party carrying out their activities related to investments in the territory of the other party.

2. Each Party shall ensure the the remittance referred to in paragraph 1 of this Article in a freely convertible currency at the prevailing at the date of the transfer market (official) exchange rate of the Party in which, territory the investment is made.

3. The Party may delay or prevent the transfer referred to in paragraphs 1 and 2 of this Article through an equal, non-discriminatory and equitable use of national legislation of its state relating to taking of protective measures for the required period of time, which may be taken in exceptional circumstances, such as: serious difficulties with payment balance and external financial difficulties or threats to receiving party.

4. Measures referred to in paragraph 3 of this Article:

a) shall be consistent with the Articles of Agreement of the international Monetary Fund from 22 July of 1944 as long as the Party taking the measures is a party to the said Articles;

b) shall be temporarily and shall be eliminated as soon as conditions permit; and the other Party shall be promptly notified about.

5. Nothing in this Article shall be regarded as altering the rights enjoyed and obligations undertaken by a Party as a party of the International Monetary Fund.

Article 7. Subrogation

1. If one Party or its authorized agency has made payment for the reimbursement of losses incurred by its investors, according to the guarantee given in respect of investments in the territory of the other Party, the other Party shall recognize:

a) the transfer to the first Party or its authorized agency of any rights and claims of the investor, who is paid for losses under the law or legal transaction, and;

b) that the first Party or its authorized agency have the right to exercise such rights and enforce such claims by virtue of subrogation, and must accept the obligations associated with investments.

2. In such a transfer of rights or claims, the first Party shall not exceed the original rights or claims of the investor.

3. Subrogation of rights and obligations of investor paid for a loss shall also be made in accordance with the transfer payments made in accordance with Article 6 of this Agreement.

Article 8. Settlement of Disputes between the Parties

1. Disputes between the Parties concerning the interpretation and application of this Agreement shall, if possible, be settled through negotiation and consultation.

2. If the dispute can not be resolved in this manner within six (6) months from the date when such negotiations were requested by either of the Party in written form through diplomatic channels, the dispute shall be at the request of any Party submitted to arbitration.

3. Such an arbitration tribunal mentioned in paragraph 2 of this Article shall be established for each individual case follows. Within three (3) months after the receipt of the request for arbitration, each Party shall appoint one member of the Court. Then these two members must choose the Chairman, with a citizenship of a third State, who shall be appointed within two (2) months after approval by the Parties.

4. If the necessary appointments have not made within the period specified in paragraph 3 of this Article, any Party in the absence of any other arrangement, invites the President of UN International Court of Justice to make the necessary appointments. If the President is a national of any Party or any other circumstance prevents the execution of the specified function, then the Vice-Chairman of UN International Court of Justice is invited to make the necessary appointments. If the Vice-Chairman of the International Court of Justice is a national of any of the Parties or other circumstance prevents the execution of this function, then the most senior Member of UN International Court of Justice shall be invited.

5. The arbitration tribunal shall make decisions on the basis of the provisions of this Agreement and based on generally accepted principles and standards of international law. The arbitration tribunal deliver judgement on the basis of majority vote. The arbitration award shall be binding on both Parties.

6. Every Party shall bear the costs of representation in the arbitration. The cost of the Chairman and other costs shall be divided equally between the Parties. The arbitration tribunal may in its decision determine that most of the costs shall be covered with one of the Parties and such decision shall be binding on both parties. The arbitration tribunal determines its own procedure itself.

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

1. Disputes between one of the Party's investor and the other Party relating to obligations of the latter under this Agreement and related to investments of the investors of the first Party 1 shall be settled, if possible, by negotiations.

2. If the dispute mentioned in paragraph 1 of this Article can not be settled within six (6) months from the date of receipt of written notice of claim, the dispute at the discretion of the parties to the dispute may be submitted for settlement to:

a) the competent court of the Party in which territory investments were made, or

b) arbitration ad hoc, established in accordance with the Arbitration Rules of the UN Commission on International Trade Law (UNCITRAL). The arbitration tribunal of the International Chamber of Commerce shall be the authorized body, appointed in accordance with paragraph 2 of Article 6 of the Arbitration Rules

c) International Centre for Settlement of Investment Disputes, in the case where both Parties are participants to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington, March 18, 1965, with the venue of the arbitration tribunal in Paris / Geneva in accordance with Article 63 of the Convention, or

d) Court of Arbitration of the International Chamber of Commerce (ICC) with the venue of the tribunal in Paris / Geneva.

3. If the investor of one Party and the other Party or its agency or state enterprise signed an investment agreement, which provides a procedure for resolving disputes arising from this agreement, then only this procedure shall be applied.

4. Investor of one Party lose the right of access to courts or arbitration, in accordance with paragraph 2 of this Article, in the

case of subrogation - in accordance with Article 7 of this Agreement.

5. The arbitral award rendered in accordance with paragraph 2 of this Article shall be binding on both parties to the dispute. Each Party shall ensure the execution of the decision at their territory.

Article 10. Application of other Provisions

If the national legislation of the state of any Party or international treaties to which both of the Parties are or may be the participants contain the rules entitling investments by investors of the other Party the treatment more favorable than that provided in this Agreement, then such national legislation of the state and international treaties will prevail over this Agreement.

The provisions of this Article shall, not be considered as enabling the Party to use any other method of dispute settlement with an investor of the other Party, except as provided in Article 9 of this Agreement..

Article 11. Consultations

Representatives of the Parties may, if necessary, conduct consultations on the application of this Agreement. Such consultations shall be conducted at the suggestion of one of the Parties. The date and place of the consultation must be agreed through diplomatic channels.