Agreement between the Government of the Republic of Kazakhstan and the Government of the Socialist Republic of Vietnam on the encouragement and mutual protection of investments

The Government of the Republic of Kazakhstan and the Government of the Socialist Republic of Vietnam (hereinafter referred to as the Contracting Parties),

Desiring to create favorable conditions for the development of mutual economic cooperation, and in particular for investments of investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the promotion and mutual protection of such investments will contribute to the promotion of business initiative and the growth of welfare in the Contracting Parties;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1) The term "investment" means all types of assets invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws of the state of the latter Contracting Party and includes assets consisting of or in form:

a) interests, shares and other forms of participation in the equity capital as well as bonds, debentures and other forms of debt interests, other debts and credits, securities issued by any investor of the Contracting Party;

b) monetary claims, claims on any other assets, claims for the performance of a contract having economic value;

c) intellectual property rights, including copyrights, trademarks, patents, industrial designs, models and technical processes, know-how, trade secrets, trade names and goodwill;

d) any rights, whether under national law, contract or by virtue of licences or permits granted under national law, including rights to explore, develop, produce and use natural resources;

e) any other tangible and intangible, movable and immovable property and any related property rights such as leases, mortgages, pledges and sureties.

However, the term "investment" does not mean monetary claims arising only from:

f) commercial contracts for the sale of goods and services by a resident or an enterprise in the territory of one Party to an enterprise in the territory of the other Contracting Party; or

g) the granting of credit in connection with a commercial transaction, such as commercial financing; or

h) other monetary claims that do not include the assets specified in subparagraphs (a) to (e) of this paragraph.

Any change in the form of investment or reinvestment of assets or rights shall not affect their nature as investments, provided that such change is made in accordance with the national law and regulations of the host Contracting Party.

(2) The term "investor" in relation to a Contracting Party means:

a) a natural person who has the nationality of that Contracting Party in accordance with its national legislation in force;

b) a legal person established in accordance with the national law and regulations of that Contracting Party, such as a corporation, partnership, trust, society, association or enterprise.

(3) The term "profits" means profits from investments regardless of the form in which they are paid and includes, but not limited to, revenue, interest, capital gains, dividends, royalties, as well as management, technical assistance and other payments or contributions and payments in kind regardless of their type.

4. the term "territory" means:

a) in respect of the Republic of Kazakhstan - territorial lands, inland waters, territorial waters (sea) and airspace above them, maritime zone outside territorial waters (sea), including the seabed and its subsoil over which the Republic of Kazakhstan exercises sovereignty, sovereign rights and jurisdiction in accordance with national legislation and international law;

(b) With regard to the Socialist Republic of Viet Nam, the territorial lands, islands, inland waters, territorial sea and air space above them, the maritime zone beyond the territorial sea, including the seabed and subsoil thereof, over which the Socialist Republic of Viet Nam exercises sovereignty, sovereign rights and jurisdiction in accordance with national legislation and international law.

5. The term "freely convertible currency" means a currency defined from time to time by the International Monetary Fund as freely used currency in accordance with the articles of the International Monetary Fund Agreement and its amendments.

6. The term "government objectives" is used in accordance with the national law of each Contracting Party.

Article 2. Scope of Application

1. This Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party after the entry into force of this Agreement and which comply with the national legislation of the receiving Contracting Party.

2. This Agreement shall not apply to investment disputes arising from actions which have already taken place or investment disputes which have already been settled or which were already the subject of legal or arbitration proceedings before the entry into force of this Agreement.

3. this Agreement shall not apply to:

a) taxation;

b) public procurement;

(c) subsidies or grants granted by a Contracting Party; and

d) services supplied for the performance of public functions by the authority or department of the Contracting Party concerned. For the purposes of this Agreement, services supplied for the performance of public functions shall mean any service that is not supplied on a commercial basis or in competition with one or more service providers.

Article 3. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable conditions in its territory for investments by investors of the other Contracting Party and shall recognise such investments in accordance with the national legislation of its country.

2. Investments by investors of each Contracting Party shall at all times be treated fairly and equally and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party in its territory shall prevent the management, maintenance, use or disposal of its investments by investors of the other Contracting Party by unreasonable or discriminatory measures or otherwise in any way.

Article 4. Treatment of Investments

1. Each Contracting Party shall, in respect of the use, management, operation, sale or any other disposition of investments made in the territory of one Contracting Party by investors of the other Contracting Party, grant treatment no less favourable than that applicable in the same situations to investments of investors of any third country.

2. The provisions of this Article shall not oblige one Contracting Party to extend to investors of the other Contracting Party treatment, preferences or privileges as a result:

a) any customs union, economic union, free trade area, currency union or other forms of regional and bilateral economic treaty and other similar international agreements in which either Contracting Party is or may become a party;

b) any international, regional or bilateral agreements or other similar arrangements or any domestic regulations relating entirely or mainly to taxation.

Article 5. Compensation for Amages

If investments made by an investor of one of the Contracting Parties suffer losses as a result of war, armed conflict, state of emergency, rebellion or other similar situations on the territory of the other Contracting Party, then with regard to restitution of compensation or other forms of compensation the receiving Contracting Party shall ensure a regime no less favourable than it provides to its own investors or to the investors of any third State, depending on the type of compensation provided.

Article 6. Expropriation

1. Investments of investors of the state of one Contracting Party shall not be expropriated, nationalised or otherwise subjected to any measures having the effect of nationalisation or expropriation (hereinafter expropriation) in the territory of the state of the other Contracting Party, except for measures taken for public purposes on a non-discriminatory basis in accordance with national legislation and with the payment of prompt, adequate and effective compensation.

2. The compensation shall be equal to the market value of the expropriated investment on the date preceding the date of the expropriation or before the expropriation became known to the public, whichever is earlier. Such compensation should include interest at the commercial rate established on a market basis from the date of expropriation until the date of payment. The compensation must be fully realisable and freely transferable without restriction or undue delay.

3. Notwithstanding the provisions of paragraphs 1 and 2, any measures related to the expropriation of land and the payment of compensation itself shall be in accordance with the national law and regulations of the Contracting Party receiving the investment.

4. Investors of one Contracting Party affected by an expropriation shall have the right to have their case reviewed immediately by a judicial or other independent authority of the other Contracting Party and to have their investment assessed in accordance with the principles set out in this Article and the national legislation of the expropriating Contracting Party.

5. Where a Contracting Party expropriates assets of a company which is established under its national law and in which shares, interests, bonds or other forms of participation of an investor or investors of the other Contracting Party are registered, the provisions of this Article shall apply to the shares, interests of such investors in that company.

Article 7. Transfers of Payments Related to Investments

1. Each Contracting Party shall, subject to its national legislation, guarantee investors of the other Contracting Party the free transfer to and from its territory of payments related to the investment, including transfers:

a) share capital, and additional funds for the maintenance, management and development of the investment;

b) profits;

c) payments under the contract, including depreciation of principal and accrued interest payable, in accordance with the loan agreement;

d) royalties and payments under the rights referred to in article 1, paragraph 1 (c);

e) Proceeds from the sale or liquidation of the whole or any part of the investment;

f) income and other remuneration of personnel attracted from abroad in connection with the investment;

g) Compensation payments under articles 5 and 6;

h) payments related to dispute resolution.

2. Each Contracting Party shall ensure that transfers referred to in paragraph 1 of this Article are made in a freely convertible currency at the market exchange rate of the Contracting Party in whose territory the investments are made, in effect on the date of the transfer.

3. Notwithstanding the provisions of paragraphs (1) and (2), one Contracting Party may prevent or restrict a transfer on the

basis of equal, non-discriminatory and fair application of its national laws and regulations:

a) bankruptcy, insolvency or protection of creditors' rights;

b) issue, trade or transactions in securities, futures, options or derivative financial instruments;

c) criminal or criminal offences and return of proceeds from crime;

d) financial reporting and record-keeping of cash flows as required to assist law enforcement and financial control authorities;

e) enforcement of judgments or decisions in judicial or administrative proceedings;

f) taxation;

g) social security, state pensions or compulsory savings;

h) severance payments to employees.

Article 8. Subrogation

1. If a Contracting Party or its authorised body (Indemnifying Party) makes payments under an obligation of compensation or a guarantee which it has assumed in respect of investments in the territory of the other Contracting Party (Host Party), the Host Party shall recognise:

a) transfer to the Indemnifying Party all rights and claims arising from such investments in accordance with national law and the legal transaction of the Indemnifying Party;

b) the right of the Indemnifying Party to exercise all these rights and to collect claims and assume all the obligations related to the investments by virtue of subrogation.

2. The Indemnifying Party shall, in all circumstances, be entitled to the same treatment in respect of:

(a) The rights and claims existing and the obligations assumed by that Contracting Party by virtue of the transfer of rights referred to in paragraph 1 of this Article;

(b) any payments received pursuant to those rights and claims, to the same extent that such rights and claims have been submitted to the original investor by virtue of this Agreement in respect of the said investment.

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

1. Any legal dispute arising directly from an investment between a Contracting Party and an investor of the other Contracting Party with respect to alleged violations of that investor's obligations under this Agreement relating to management, conduct, operation, sale or another disposal of the investment of the investor and which causes losses or damage to the investment should, as far as possible, be resolved amicably through negotiations between the investors. by the parties to the dispute.

2. If such dispute cannot be settled within 6 (six) months after the date of a written notification by the investor to the Contracting Party, a dispute may be referred to:

a) the competent court of the Contracting Party in whose territory the investments are located have been implemented;

b) International Centre for Settlement of Investment Disputes (hereinafter referred to as the Centre), established in accordance with the Convention on Settlement of Investment Disputes between states and individuals or legal entities of other states, committed in Washington, D.C., on 18 March 1965 (hereinafter the Washington Convention), under subject to the participation of both Contracting Parties in the said Convention; or

c) Arbitration according to the Additional Services of the Centre, if only one of the following is used The Contracting Parties are party to the Washington Convention; or

d) an ad hoc arbitration court, which, unless otherwise provided by the parties to the dispute, shall be established in accordance with the Arbitration Rules of the Commission The United Nations Convention on International Trade Law (UNCITRAL).

Once the investor has submitted the dispute according to any of the procedures, this choice is final.

For greater certainty, the provisions on most-favoured-nation treatment in this Agreement shall not include requirements for investors of the other Contracting Party to the implementation of the dispute resolution procedures other than those specified in this Agreement.

3. Submission of the dispute to arbitration in accordance with paragraph 2. is conditioned upon submission of such dispute to arbitration within 2 (two) years from the date when the investor has become aware of, or should reasonably become aware of, a breach of the obligation in accordance with this Agreement, and on loss or damage incurred by the investor or the investments made.

4. The Arbitration Court shall make its decisions in accordance with the provisions of this Code. agreements, national legislation and regulations of the Contracting Party, involved in the dispute and on whose territory the investments were made (including any special agreement concluded in respect of investments and relevant principles of international law.

5. No Contracting Party shall have the right to make a counterclaim for protective purposes at any stage of the arbitration proceedings or during the enforcement of the arbitral award and to indicate that an investor of the other Contracting Party has received or will receive under insurance or guarantee contract, compensation or other compensation in respect of all or part of any alleged losses.

6. Any award made in accordance with this article shall be final and binding on both parties to the dispute and shall be enforced in accordance with the national law of the State of the Contracting Party in whose territory the award is enforced.

Article 10. Settlement of Disputes between the Contracting Parties

1. The Contracting Parties shall settle, to the extent possible, any dispute concerning the interpretation or application of this Agreement through consultation or diplomatic channels.

2. If a dispute has not been settled within six months after the date on which a written request for consultation was made by one of the Contracting Parties through the diplomatic channels, then, unless the Contracting Parties have agreed otherwise in writing, any Contracting Party may, by written notification through the diplomatic channels of the other Contracting Party, submit the dispute to a special arbitration tribunal in accordance with the following provisions of this Article.

(3) The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one member, and the two members shall be agreed upon by the Chairman of the arbitral tribunal, who shall be a national of a third State, and who shall be appointed by both Contracting Parties. Two members shall be appointed within two months and the Chairman within four months of receipt of written notification by one Contracting Party of the intention of the other Contracting Party to submit the dispute to an ad hoc arbitration tribunal.

4. If the time limits specified in paragraph 3 have not been met, any Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice of the United Nations is a national of one of the Contracting Parties or if he is in any way unable to perform the said functions, the Vice-President of the International Court of Justice of the United Nations shall be invited to make the necessary appointments. If the Vice-President of the International Court of Justice of the United Nations is a national of one of the Contracting Parties or if he is also unable to perform the said functions, the next ex officio member of the International Court of Justice of the United Nations who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall take its decisions by majority vote. Such decision shall be made in accordance with this Agreement, recognized rules of international law which may be applicable, and shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the expenses of the member of the arbitral tribunal appointed by it as well as the costs of representation in the arbitral proceedings. The costs of the chairman as well as any other costs associated with the arbitration proceedings shall be borne equally by both Contracting Parties. However, the arbitral tribunal may, at its discretion, determine the shares for each of the Contracting Parties. In all other respects, the arbitral tribunal shall determine its own procedures.

Article 11. Entry Into Force

This Agreement shall enter into force thirty (30) days after receipt through diplomatic channels of the last written notification of the completion by the Contracting Parties of the domestic procedures necessary for its entry into force.

Article 12. Duration and Termination

1. This Agreement shall be concluded for a period of 10 (ten) years, after which it shall be automatically renewed for an indefinite period.

2. Any Contracting Party may terminate this Agreement upon the expiration of ten (10) years from the date on which this Agreement enters into force. The Agreement shall terminate one year after the date of receipt by one Contracting Party, through diplomatic channels, of written notification to the other Contracting Party of its intention to do so.

3. With regard to investments made prior to the date of termination of this Agreement, the provisions of all other articles of this Agreement shall remain in force for a period of 10 (ten) years from the date of its termination.

In witness whereof the undersigned, being duly authorized to do so by their Governments, have signed this Agreement.

Done in Astana on 15 September 2009 in duplicate in the Kazakh, Vietnamese, Russian and English languages, all texts being equally authentic. In the event of any dispute in the application and interpretation of the provisions of this Agreement, the Contracting Parties shall refer to the English language text.

For the Government of the Republic of Kazakhstan

For the Government of the Socialist Republic of Vietnam