

Agreement between the Government of the Republic of Finland and the Government of the Republic of Kazakhstan on the Promotion and Mutual Protection of Investments

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

RECOGNISING the need to protect investments of the investors of one Party in the territory of the State of the other Party on a non-discriminatory basis;

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

RECOGNISING that agreement on the treatment to be accorded such investments will stimulate the flow of private capital and the economic development of the Parties;

AGREEING that a stable framework for investment will contribute to maximising the effective utilisation of economic resources and improve living standards;

RECOGNISING that the development of economic and business ties can promote respect for internationally recognised labour rights;

AGREEING that these objectives can be achieved without relaxing health, safety and environmental measures of general application; and

Having resolved to conclude an Agreement concerning the promotion and mutual protection of investments;

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purpose of this Agreement:

1. The term "investment" means every kind of asset established or acquired in connection with business and entrepreneurial activity by an investor of one Party in the territory of the other Party in accordance with the national legislation of the State of the latter Party, including in particular, though not exclusively:

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

(b) reinvested returns;

(c) shares in and stocks and debentures of a company or any other forms of participation in a company;

(d) claims to money or rights to a performance having an economic value;

(e) intellectual property rights, such as patents, copyrights, trade marks, industrial designs, business names, geographical indications as well as technical processes, know-how and goodwill; and

(f) concessions conferred by law, by an administrative act or under a contract by a competent authority, including concessions to search for, develop, extract or exploit natural resources.

Investments made in the territory of one Party by any legal entity of that same Party, but actually owned or controlled, directly or indirectly by investors of the other Party, shall likewise be considered as investments of investors of the latter Party if they have been made in accordance with the national legislation of the State of the former Party.

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

2. The term "returns" means the amounts yielded by investments and shall in particular, though not exclusively, include profits, dividends, interest, royalties, capital gains or any payments in kind related to an investment.

3. The term "investor" means, for either Party, the following subjects who invest in the territory of the State of the other Party in accordance with the national legislation of the State of the latter Party and the provisions of this Agreement:

(a) any natural person who is a national of either Party in accordance with its legislation; or

(b) any legal entity such as company, corporation, firm, partnership, business association, institution or organisation, incorporated or constituted in accordance with the national legislation of the Party and having its registered office or central administration or principal place of business within the jurisdiction of that Party.

4. The term "territory" means the land territory, internal waters and territorial sea of the State of the Party and the airspace above them, as well as the maritime zones beyond the territorial sea, including the seabed and subsoil, over which that Party exercises sovereign rights or jurisdiction in accordance with its national laws in force and international law, for the purpose of exploration and exploitation of the natural resources of such areas.

Article 2. Promotion and Protection of Investments

1. Each Party shall promote in its territory investments by investors of the other Party and shall, in accordance with its national legislation, admit such investments.

2. Each Party shall in its territory accord to investments and returns of investments of investors of the other Party fair and equitable treatment and full and constant protection and security.

3. Neither Party shall in its territory impair by unreasonable or arbitrary measures the acquisition, expansion, operation, management, maintenance, use, enjoyment and sale or other disposal of investments of investors of the other Party.

Article 3. Treatment of Investments

1. Each Party shall accord to investors of the other Party and to their investments, a treatment no less favourable than the treatment it accords to its own investors and their investments with respect to the acquisition, expansion, operation, management, maintenance, use, enjoyment and sale or other disposal of investments.

2. Each Party shall accord to investors of the other Party and to their investments, a treatment no less favourable than the treatment it accords to investors of the most favoured nation and to their investments with respect to the establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment, and sale or other disposal of investments.

3. Each Party shall accord to investors of the other Party and to their investments the better of the treatments required by paragraph 1 and paragraph 2 of this Article, whichever is the more favourable to the investors or investments.

4. Neither Party shall mandate or enforce in its territory measures on investments by investors of the other Party, concerning purchase of materials, means of production, operation, transport, marketing of its products or similar orders having discriminatory effects.

Article 4. Exemptions

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

(a) free trade area, customs union, common market, economic and monetary union or other similar regional economic integration agreement, including regional labour market agreements, to which one of the Parties is or may become a party, or

(b) agreement for the avoidance of double taxation or other international agreement relating wholly or mainly to taxation, or

(c) multilateral agreement relating wholly or mainly to investments.

Article 5. Expropriation

1. Investments by investors of a Party in the territory of the other Party shall not be expropriated, nationalised or subjected to any other measures, direct or indirect, having an effect equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation"), except for a purpose which is in the public interest, on a non-discriminatory basis, in accordance with due process of law, and against prompt, adequate and effective compensation.

2. Such compensation shall amount to the value of the expropriated investment at the time immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier. The value shall be determined in accordance with generally accepted principles of valuation.

3. Compensation shall be fully realisable and shall be paid without any restriction or delay. It shall include interest at a commercial rate established on a market basis for the currency of payment from the date of dispossession of the expropriated property until the date of actual payment.

4. Where a Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Party own shares, it shall ensure that the provisions of paragraph 1 of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the Party who are owners of those shares.

5. Without prejudice to the provisions of Article 9 of this Agreement, the investor whose investments are expropriated shall have the right to prompt review of its case and of valuation of its investments in accordance with the principles set out in this Article, by a judicial or other competent authority of that Party.

Article 6. Compensation for Losses

1. Investors of one Party whose investments in the territory of the other Party suffer losses owing to war or other armed conflict, revolt, insurrection or riot in the territory of the State of the latter Party, shall be accorded by the latter Party, as regards restitution, indemnification, compensation or other settlement, a treatment no less favourable than the one accorded by the latter Party to its own investors or investors of the most favoured nation, whichever, according to the investor, is the more favourable.

2. Without prejudice to paragraph 1 of this Article, investors of one Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the state of the other Party resulting from:

(a) requisitioning of its investment or a part thereof by the latter's armed forces or authorities, or

(b) destruction of its investment or a part thereof by the latter's armed forces or authorities, which was not required by the necessity of the situation,

shall be accorded by the latter Party restitution or compensation which in either case shall be prompt, adequate and effective and with respect to compensation, shall be in accordance with Article 5 paragraphs 1-3 from the date of requisitioning or destruction until the date of actual payment.

Article 7. Free Transfer

1. Each Party shall ensure to investors of the other Party the free transfer, into and out of its territory, of their investments and transfer payments related to investments. Such payments shall include in particular, though not exclusively:

(a) principal and additional amounts to maintain, develop or increase the investment;

(b) returns;

(c) proceeds obtained from the total or partial sale or disposal of an investment, including the sale of shares;

(d) amounts required for the payment of expenses which arise from the operation of the investment, such as loans repayments, payment of royalties, management fees, licence fees or other similar expenses;

(e) compensation payable pursuant to Articles 5, 6, 8 and 9;

(f) earnings and other remuneration of personnel engaged from abroad and working in connection with an investment.

2. Each Party shall further ensure that the transfers referred to in paragraph 1 of this Article shall be made without any restriction or delay in a freely convertible currency of the choice of the investor and at the prevailing market rate of exchange applicable on the date of transfer to the currency to be transferred and shall be immediately transferable.

3. In the absence of a market for foreign exchange, the rate to be used shall be the most recent exchange rate for the conversions of currencies into Special Drawing Rights.

4. In case of a delay in transfer caused by the host Party, the transfer shall also include interest at a commercial rate established on a market basis for the currency in question from the date on which the transfer was requested. until the date of actual transfer and shall be borne by that Party.

5. Notwithstanding paragraphs 1 - 4 of this Article, a Party may delay a transfer through the equitable and non-discriminatory application of its laws and regulations relating to:

(a) the fulfilment of due tax obligations;

(b) the protection of the rights of creditors;

(c) criminal or penal offences;

(d) ensuring compliance with orders or judgements in judicial proceedings;

provided that the application of such laws and regulations shall not be used as a means of avoiding the obligations of the Parties under this Agreement.

Article 8. Subrogation

If a Party or its designated agency makes a payment under an indemnity, guarantee or contract of insurance given in respect of an investment of an investor in the territory of the other Party, the latter Party shall recognise the assignment of any right or claim of such an investor to the former Party or its designated agency, and the right of the former Party or its designated agency to exercise by virtue of subrogation any such right and claim to the same extent as its predecessor in title.

Article 9. Disputes between an Investor and a Party

1. Any dispute arising directly from an investment between one Party and an investor of the other Party should be settled amicably between the two parties to the dispute.

2. If the dispute has not been settled within three (3) months from the date on which it was raised in writing, the dispute may, at the choice of the investor, be submitted:

(a) to the competent courts of the Party in whose territory the investment is made; or

(b) to arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965 (hereinafter referred to as the "Centre"), if the Centre is available; or

(c) to arbitration by the Additional Facility of the Centre, if only one of the Parties is a signatory to the Convention referred to in subparagraph b of this paragraph;

(d) an ad hoc arbitration tribunal to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(e) any other previously accepted ad hoc arbitration tribunal.

3. An investor who has submitted the dispute to a national court may nevertheless have recourse to one of the arbitral tribunals mentioned in paragraphs 2 (b) or 2 (e) of this Article if, before a judgment has been delivered on the subject matter by a national court, the investor declares not to pursue the case any longer through national proceedings and withdraws the case.

4. Any arbitration under this Article shall, at the request of either party to the dispute, be held in a state that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), opened for signature at New York on 10 June 1958. Claims submitted to arbitration under this Article shall be considered to arise out of a commercial relationship or transaction for the purposes of Article 1 of the New York Convention.

5. Each Party hereby gives its unconditional consent to the submission of a dispute between it and an investor of the other Party to arbitration in accordance with this Article.

6. Neither of the Parties, which is a party to a dispute, can raise an objection, at any phase of the arbitration procedure or of the execution of an arbitral award, on account of the fact that the investor, which is the other party to the dispute, has received an indemnification covering a part or the whole of its losses by virtue of an insurance.

7. The award shall be final and binding on the parties to the dispute and shall be executed in accordance with national legislation of the State of the Party in whose territory the award is relied upon, by the competent authorities of the Party by the date indicated in the award.

Article 10. Disputes between the Parties

1. Disputes between the Parties concerning the interpretation and application of this Agreement shall, as far as possible, be settled through diplomatic channels.

2. If the dispute cannot thus be settled within six (6) months following the date on which either Party requested such negotiations, it shall at the request of either Party be submitted to an Arbitral Tribunal.

3. Such an Arbitral Tribunal shall be constituted for each individual case in the following way. Within two (2) months of the receipt of the request for arbitration, each Party shall appoint one member of the Tribunal. Those two members shall then select a national of a third State who on approval by the two Parties shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within four (4) months from the date of appointment of the other two members.

4. If the necessary appointments have not been made within the periods specified in paragraph 3 of this Article, either 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 is a national of the State of either Party or is otherwise prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of the state of either Party or is not 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 decisions of the Tribunal shall be final and binding on both Parties. Each Party shall bear the costs of the member appointed by that Party and of its representation in the arbitral proceedings. Both Parties shall assume an equal share of the costs of the Chairman, as well as any other costs connected with the Tribunals procedures. The Tribunal may make a different decision regarding the sharing of the costs. In all other respects, the Arbitral Tribunal shall determine its own rules of procedure.

6. Issues subject to dispute referred to in paragraph 1 of this Article shall be decided in accordance with the provisions of this Agreement and the generally recognised principles of international law.

Article 11. Permits

1. Each Party shall, subject to the national legislation of its State, treat favourably the applications relating to investments and grant expeditiously the necessary permits required in its territory in connection with investments by investors of the other Party.

2. Each Party shall, subject to the national legislation of its State, grant temporary entry and stay and provide any necessary confirming documentation to natural persons who are employed from abroad as executives, managers, specialists or technical personnel in connection with an investment by an investor of the other Party, and who are essential for the enterprise, as long as these persons continue to meet the requirements of this paragraph. Immediate family members of such personnel shall also be granted a similar treatment with regard to entry and temporary stay in the territory of the host Party.

Article 12. Application of other Rules

1. If the provisions of national legislation of the State of either Party or obligations under international law, existing at present or established hereafter between the Parties in addition to this Agreement, contain a regulation, whether general or specific, entitling investments made by investors of the other Party to a treatment more favourable than is provided by this Agreement, such provisions shall, to the extent that they are more favourable to the investor, prevail over this Agreement.

2. Each Party shall observe any other obligation it may have with regard to a specific investment of an investor of the other Party.

Article 13. Application of the Agreement

This Agreement shall apply to all investments made by investors of either Party in the territory of the other Party, whether made before or after the entry into force of this Agreement, but shall not apply to any dispute concerning an investment, which arose or any claim, which was settled before its entry into force.

Article 14. General Derogations

1. Nothing in this Agreement shall be construed as preventing the Parties from taking any action necessary for the protection of its national security interests or measures necessary for the maintenance of public order provided that such action or measures are not applied in a manner, which would constitute a means of arbitrary or unjustifiable discrimination by a Party, or a disguised investment restriction.
2. The provisions of this Article shall not apply to Article 7 paragraph 1(e) of this Agreement.

Article 15. Transparency

1. Each Party shall promptly publish, or otherwise make publicly available, its laws, regulations, procedures and administrative rulings and judicial decisions of general application as well as international agreements which may affect the investments of investors of the other Party in the territory of the State of the former Party.
2. Nothing in this Agreement shall require a Party to furnish or allow access to any confidential or proprietary information, including information concerning particular investors or investments, the disclosure of which would impede law enforcement or be contrary to its laws protecting confidentiality or prejudice legitimate commercial interests of particular investors.

Article 16. Consultations

The Parties shall, at the request of either Party, hold consultations for the purpose of reviewing the implementation of this Agreement and studying any issue that may arise from this Agreement. Such consultations shall be held between the competent authorities of the Parties in a place and at a time agreed on through diplomatic channels.

Article 17. Entry Into Force, Duration and Termination

1. The Parties shall notify each other in writing when their internal legal procedures for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the first day of the second month from the date, when the last notification was received through diplomatic channels.
2. Upon its entry into force this Agreement substitutes and replaces the Agreement between the Government of the Republic of Finland and the Government of the Republic of Kazakhstan on the Promotion and Protection of Investments done at Alma Ata on the 29th day of September 1992.
3. This Agreement shall remain in force for a period of ten (10) years and shall thereafter remain in force until either Party notifies the other in writing of its intention to terminate the Agreement in twelve (12) months.
4. In respect of investments made prior to the date of termination of this Agreement, provisions of Articles 1 to 16 shall remain in force for a further period of twenty (20) years from the date of termination of this Agreement.
5. Upon mutual agreement, the Parties may introduce amendments to the present Agreement. Such amendments shall be formulated through protocols and form an integral part of the present Agreement. They shall come into force through the same procedures as the original Agreement.

IN WITNESS WHEREOF, the undersigned representatives, being duly authorised thereto, have signed the present Agreement.

Done in duplicate at Astana on 9th of January 2007 in the Finnish, Kazakh, Russian and English languages, all texts being equally authentic. In case of divergence, the English text shall prevail.

For the Government of the Republic of Finland

For the Government of the Republic of Kazakhstan