

# **Agreement between the Government of the Republic of Kazakhstan and the Government of Mongolia on the promotion and mutual protection of investments**

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

Wishing to strengthen and expand economic cooperation between the two states,

Striving to create favorable conditions for the investment of investors of one state in the territory of another state,

Recognizing that the promotion and mutual protection of investments in accordance with the Agreement will contribute to the economic development of the two states,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1 The term "Investments" means all types of property values and covers, in particular, but not exclusively:

- movable and immovable property and any other related property rights, including mortgages, the right to withhold mortgages or other collateral and funds in accounts with banks and other financial institutions;
- shares, deposits (shares), bonds and any other forms of participation in enterprises, joint-stock companies, business partnerships, associations and in other legal entities recognized by law registered in accordance with the legislation of each of the Contracting Parties;
- loans, loans, targeted bank and financial contributions and other monetary requirements related to the implementation of investments;
- rights to intellectual and industrial property, including objects protected by copyright, patents, trademarks, service marks, trade names, industrial designs, trade secrets and know-how;
- reinvestment of income and payments of principal and interest on loan agreements;

2 The term "investor" means:

- A An individual who is a citizen of a State of one of the Contracting Parties in accordance with applicable law;
- B Any legal entity established in accordance with the current legislation of one of the Contracting Parties;
- C A legal entity not established in accordance with the legislation of one of the Contracting Parties, but directly or indirectly controlled by natural or legal persons of the same Contracting Party.

3 The term "income" means:

Funds received as a result of investments or associated with them, in cash or in kind, including profits, dividends, management fees, maintenance and any other legal income.

4 Changing the form of the investment permitted by law and other regulations of the State of the Contracting Party on whose territory the investment was made does not change its nature as an investment.

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

1 Each of the Contracting Parties shall facilitate the investment of individuals and legal entities of the other Contracting Party and will authorize such investments in accordance with its legislation.

2 Each of the Contracting Parties shall ensure fair and equitable treatment for investors of the other Contracting Party and shall not impair the management, use or disposition of these investments by arbitrary or discriminatory measures.

### **Article 3. Legal Regime of Investments**

1 Each of the Contracting Parties shall ensure in its territory with respect to investments a regime no less favorable than that granted to investments of its own investors or investments of investors of third countries.

2 This mode does not apply to:

A The advantages that one of the Contracting Parties grants to investors of individual countries in connection with their joint participation in the customs or economic union of free trade;

B The advantages that one of the Contracting Parties grants to investors of individual countries on the basis of an agreement on avoidance of double taxation or other agreements on tax issues.

### **Article 4. Expropriation**

Investments of investors of one of the Contracting Parties can not be requisitioned, nationalized, expropriated or subjected to other measures having such effects as requisition, nationalization, expropriation (hereinafter - expropriation), except for cases when expropriation is carried out in the public interest and produced:

- in accordance with the procedure established by law;
- without discrimination;
- with payment without delay of adequate compensation.

Compensation should be equal to the market value of the expropriated investment immediately before the moment of expropriation or before the forthcoming expropriation became known, whichever occurs first.

Compensation shall include interest corresponding to the effective interest rate calculated for the period between the date specified in part two of this Article of this Agreement and the date of payment of compensation. Compensation will be paid in the currency in which the investment was made, or, with the consent of the investor, in any other currency. Compensation is subject to transfer abroad without restriction or unnecessary delay.

### **Article 5. Indemnification**

Investors of one of the Contracting Parties whose investments in the territory of the other Contracting Party have suffered damage as a result of war or other armed conflict, state of emergency or similar circumstances are granted a treatment no less favorable than that applied to their investors or third country investors, with Compensation for the damage suffered by them as a result of the above circumstances.

These amounts are subject to free transfer abroad.

### **Article 6. Transfer of Payments Related to Investments**

1 The Contracting Parties guarantee that all funds transfers related to investments are made freely and without undue delay in accordance with the procedure established by the legislation of the Contracting Party to which the following may be provided:

- the rules for processing such transfers, taking into account that the right to free transfer is not violated;
- taxes, fees and withholdings from transferable amounts;
- Protection of the legal rights of creditors or enforcement of decisions made in the course of proceedings.

The procedure specified in this article must be fair and non-discriminatory.

2 In this Agreement, transfers include:

- initially invested capital, as well as any additional foreign capital used to maintain or expand investment
- profit
- compensation in accordance with Article 4 of this Agreement;
- payments resulting from the resolution of an investment dispute;
- payments in accordance with the loan agreement, as well as remuneration in connection with the rights to intellectual and industrial property, payment under a management agreement, technical and service support;
- payments for damages in accordance with Article 5 of this Agreement;
- part of the payment for labor on a regular basis for individuals of the other Contracting Party carrying out activities related to investments;
- proceeds from the sale or liquidation of part or all of the investment.

3 Transfers will be made without undue delay in freely convertible currency at the rate applicable on the day of transfer.

The translation "without undue delay" will be considered a translation made during the time normally required to perform formal actions related to the transfer.

## **Article 7. Application of other Rules**

If the provision of the legislation of one of the Contracting Parties or the obligations under international law currently in effect or established between the Contracting Parties in addition to this Agreement contain rules either general or special, giving investors of the investment of the other Contracting Party a more favorable treatment than This is provided for in this Agreement, such rules will prevail over this Agreement.

## **Article 8. Subrogation**

1 If a Contracting Party or some of its authorized institutions makes payments to any of its investors in the framework of a guarantee or insurance concluded in connection with an investment, the other Contracting Party will recognize the assignment to the first Contracting Party or its institution of any rights or requirements inherent in the investor . The Contracting Party or any of its institutions with which the rights of the investor is transferred have the right to the same rights as the investor has and to the claims of such rights to the same extent, with reservation in respect of the investor's obligations related to the investment so insured.

2 In the case of subrogation specified in paragraph 1 of this Article, the investor will not make claims unless it is authorized by the Contracting Party or its any institution.

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

1 Disputes between the Contracting Parties concerning the interpretation and application of the provisions of this Agreement shall be resolved through diplomatic channels.

2 If agreement is not reached by the Contracting Parties within six months from the date of the dispute, the dispute shall, at the request of any of the Contracting Parties, be referred to an arbitral tribunal composed of three members. Each of the Contracting Parties shall appoint one arbitrator and the appointed arbitrators shall elect a chairman who will be a citizen of a third State maintaining diplomatic relations with both Contracting Parties.

3 If one of the Contracting Parties does not appoint an arbitrator and agrees with the invitation of the second Contracting Party to make such appointment within two months, the arbitrator shall be appointed at the request of that Contracting Party by the President of the International Court of Justice in The Hague.

4 If both of the arbitrators can not reach agreement on the election of the chairman within two months from the date of their appointment, he shall be appointed at the request of any of the Contracting Parties by the President of the International Court of Justice.

5 If, in the cases specified in paragraphs 3 and 4 of this article, the President of the International Court of Justice can not perform this function or if he is a citizen of one of the Contracting Parties, such appointment will be made by the Vice-President, and if he can not fulfill the corresponding Function or is a citizen of one of the Contracting Parties, the

appointment will be made by the highest-ranking judge of the International Court of Justice who is not a national of either of the Contracting Parties.

6 Without prejudice to other arrangements between the Contracting Parties, the arbitral tribunal shall establish its own rules of procedure. The arbitral tribunal shall rule by a majority of votes.

7 Each of the Contracting Parties shall bear the cost of maintaining its member of the court, as well as in accordance with its share in the arbitration procedure; The expenses for the maintenance of the chairman and other expenses are covered by the Contracting Parties in equal parts. However, the court may in its decision determine the greater participation of one of the Contracting Parties and this decision will be binding on both Contracting Parties.

8 The decisions of the court are final and binding on each of the Contracting Parties.

## **Article 10. Disputes between the Contracting Party and the Investor of the State of the Second Contracting Party**

1 With a view to resolving a dispute between a Contracting Party and an investor of the State of the second Contracting Party in relation to an investment, without negotiating the provisions of Article 9 of this Agreement, negotiations will be held between the Parties concerned.

2 If negotiations are not concluded by a decision within six months from the date of a written proposal to start negotiations, the Parties to the dispute may proceed as follows:

A If the dispute concerns obligations under Articles 4, 5, 6 of this Agreement, he, at the request of the investor, is referred to the arbitral tribunal;

B A dispute not specified in sub-paragraph a) of paragraph 2 of this Article will be transferred, by agreement of both parties to the dispute, to the arbitral tribunal.

3 The arbitration court will be created for each individual case. If the parties to the dispute do not agree otherwise, each of them will appoint one arbitrator. The appointed arbitrators elect a chairman who will be a citizen of a third state.

Arbitrators must be appointed within two months from the date of receipt of the request for referral of the dispute for consideration by the arbitral tribunal, and the chairman - within the next two months.

4 If the terms specified in paragraph 3 of this Article have not been fulfilled, any of the Parties to the dispute may, without other agreements, apply to the President of the Court of Arbitration at the International Chamber of Commerce in Paris with a request to make the necessary appointments. If the President is unable to perform the specified function or is a national of the Contracting Party, similar provisions of paragraph 5 of Article 9 of this Agreement shall apply.

5 Unless otherwise agreed by the parties, the arbitral tribunal shall establish its own rules of procedure. The decisions are final and binding. Each of the Contracting Parties will ensure the recognition and enforcement of arbitral awards.

6 Each Party to the dispute bears the costs of maintaining its member of the court and in accordance with its own share in the arbitration procedure; Expenses for the maintenance of the chairman and other expenses will be borne in equal parts as Parties to the dispute. However, the court in its decision may establish a different proportion of the division of costs incurred by one of the Parties, and this decision will be binding for both Parties.

7 A Contracting Party that is a Party to the dispute can not, at any stage of the arbitration procedure or execution of a court decision, invoke the fact that the investor has received as a result of the insurance contract a refund covering all or part of the loss incurred.

8 In the event that both Contracting Parties become Parties to the Washington Convention of 18 March 1965 on Dispute Resolution concerning Investments between States and Nationals of Other States, disputes will be referred to the International Center for the Settlement of Investment Disputes as follows: disputes referred to in paragraph 2, subparagraph a) of this Article - at the request of the investor, and the disputes referred to in paragraph 2, subparagraph b) of this Article - by mutual consent of the Contracting Parties.

## **Article 11. Final Provisions**

1 The Contracting Parties shall exchange notes on the implementation of the legal procedures provided for by the national legislation of each of the Contracting Parties with respect to the entry into force of international agreements.

The effective date of this Agreement is the date of receipt of the last note.

2 This Agreement is concluded for 10 (ten) years and can be automatically extended for subsequent five-year periods, if none of the Contracting Parties declares its intention to terminate it in accordance with paragraph 6 of this article.

3 The provisions of this Agreement apply to investments made since December 16, 1991.

4 With regard to those investments that were made before the termination of this Agreement, the provisions of all the previous articles of this Agreement will remain in force for 10 (ten) years from the date of its termination.

5 This Agreement may be amended by a written agreement between the Parties. Any amendment shall enter into force if either Party notifies the other Party that it has regulated all its own formalities that prevent the entry into force of such an amendment.

6 Each of the Contracting Parties may terminate this Agreement after the first nine years or at any time thereafter by giving written notice to the other Contracting Party one year before the expiration of the period.

In witness whereof, we, duly authorized representatives, have signed this Agreement.

Done in Almaty on December 2, 1994 in two original copies in the Kazakh, Mongolian, Russian languages, all texts being equally authentic.

In the event of any discrepancies in the interpretation of the provisions of this Agreement, the Contracting Parties shall be guided by the text of the Agreement in Russian.

2012. RGP on PHV Republican Center for Legal Information of the Ministry of Justice of the Republic of Kazakhstan