

# **Agreement between the Government of the Republic of Uzbekistan and the Government of the Republic of Korea for the reciprocal promotion and protection of investments**

The Government of the Republic of Uzbekistan and the Government of the Republic of Korea (hereinafter referred to as the "Contracting Parties"),

Desiring to create favorable conditions for greater investments by investors of one Contracting Party in the territory of the other Contracting Party, based on the principles of equality and mutual benefit,

Recognizing that the reciprocal promotion and protection of investments on the basis of this Agreement will be conducive to the flow of investment and promoting the development of mutually beneficial cooperation, the stimulation of individual business initiatives and will increase prosperity in both States, and

Desiring to achieve these objectives in a manner consistent with the protection of health, safety, and the environment, and the promotion of consumer protection and internationally recognized labor rights, taking note of the need to ensure the attainment of legitimate governmental objectives to foster sustainable development;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

(a) "investment" means every kind of asset in the territory of one Contracting Party, owned or controlled directly or indirectly by an investor of the other Contracting Party, provided that the investment has been made in accordance with the laws and regulations of the former Contracting Party, and that has the characteristics of an investment, including, though not exclusively:

(i) an enterprise (being a juridical person or any other entity | constituted or organized under the applicable law of the host Contracting Party, and whether private or government-owned or controlled, and includes a corporation, trust, partnership, sole proprietorship, branch, joint venture, association or organization);

(ii) shares, stock, and other forms of equity participation in an enterprise;

(iii) bonds, debentures, other debt instruments and loans;

(iv) turnkey, construction, management, concession, revenue-sharing, and other similar contracts;

(v) intellectual property rights, including copyright, trademark, patents, industrial designs, technical processes, know-how, trade secrets and trade names, and good will;

(vi) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; (1) (2)

(vii) reinvested returns; and

(viii) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.

For the purposes of this Agreement, a claim to a payment that arises solely from the commercial sale of goods and services is not an investment, unless it is a loan that has the characteristics of an investment. In order to qualify as an investment, an asset must have the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk.

(b) "investor" means any natural or juridical person of one Contracting Party who invests in the territory of the other Contracting Party:

(i) "natural person" means a natural person having the nationality of the state of the former Contracting Party in accordance with its laws, provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality; and

(ii) "juridical person" means any entity, such as a company, public institution, authority, foundation, partnership, firm, establishment, organization, corporation, or association incorporated or constituted in accordance with the laws and regulations of the state of the Hora Contracting Party;

(c) "territory" means:

(i) in respect of the Republic of Korea, the territory, including the land area, those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea, over which the Republic of Korea, in accordance with international law, sovereign rights or jurisdiction for the purpose of the exploration and exploitation of the natural resources of such areas;

(ii) in respect of the Republic of Uzbekistan, the territory, including the land area, internal waters and the territorial sea and air space above them, as well as any area beyond its territorial sea within which the Republic of Uzbekistan has sovereign rights of exploration and exploitations of resources of the seabed and its subsoil and superjacent water resources in accordance with international law and its laws and regulations.

(d) "freely usable currency" means any currency that the International Monetary Fund determines, from time to time, to be a freely usable currency in accordance with the Articles of Agreement of the International Monetary Fund and any amendments thereto;

(e) "financial service" means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature;

(f) "laws and regulations of the State of each Contracting Party" means laws, regulations, rules, decrees with legally binding characteristic in the territory of the State of each Contracting Party.

(1) Whether a particular type of license, authorization, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the law of the Contracting Party. Among the licenses, authorizations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the license, authorization, permit, or similar instrument has the characteristics of an investment.

(2) The term "investment" does not include an order or judgment entered in a judicial or administrative action.

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

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

2. Investment of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

4. Neither Contracting Party shall take any unreasonable or discriminatory measures against the management, maintenance, use, enjoyment, and disposal of investments by the investors of the other Contracting Party, nor impose unreasonable or discriminatory measures on investments by investors of the other Contracting Party concerning local content, technology transfer or export performance requirements.

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

1. Each Contracting Party shall accord in its territory to investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment, or disposal of their investments, treatment no less favorable than that which it accords in like circumstances to its own investors (hereinafter referred to as "national treatment") or to investors of any third State (hereinafter referred to as "most-favored-nation treatment"), whichever is more favorable.

2. Each Contracting Party shall accord in its territory to investments made in accordance with its laws and regulations by investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment, or disposal of their investments, treatment no less favorable than that which it accords in like circumstances to investments of its own investors (national treatment) or to investments of investors of any third State (most-favored-nation treatment), whichever is more favorable.

3. The standard of national treatment as provided for in paragraphs 1 and 2 of this Article means, with respect to a sub-national government, treatment no less favorable than the most favorable treatment accorded in like circumstances by that sub-national government to investors, and to investments of investors, of the Contracting Party of which it forms a part.

4. The national treatment and most-favored-nation treatment as provided for in paragraphs 1 and 2 of this Article do not apply to:

(a) government procurement; or

(b) subsidies or grants provided by a Contracting Party, including government-supported loans, guarantees, and insurance.

5. The most-favored-nation treatment as provided for in paragraphs 1 and 2 of this Article shall not relate to privileges and preferences which either Contracting Party accords to investors of third States on account of its present or future membership of, or association with, a customs or economic union, a common market or a free trade area or any similar economic integration or by virtue of any international agreement relating wholly or mainly to taxation.

6. For greater certainty, the most-favored-nation treatment as provided for in paragraphs 1 and 2 of this Article shall not apply to Article 11 (Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party) of this Agreement.

7. Notwithstanding the provisions of this Article, each Contracting Party may apply its laws and regulations concerning the acquisition of land, real estate and real rights in its territory by the other Contracting Party's investors.

## **Article 4. Compensation for Losses**

1. Investors of one Contracting Party, whose investments suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection, riot or other similar situation in the territory of the other Contracting Party, shall be accorded by the latter Contracting Party, as regards } restitution, indemnification, compensation or other forms of settlement, treatment no less favorable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

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

(a) requisitioning of their property by the latter Contracting Party's forces or authorities; or

(b) destruction of their property by the latter Contracting Party's forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

shall be accorded restitution, compensation, or both, as appropriate, for such losses. Any compensation shall be prompt, adequate, and effective in accordance with Article 5 (Expropriation and Compensation), *mutatis mutandis*.

## **Article 5. Expropriation and Compensation (3)**

1. Neither Contracting Party may expropriate or nationalize an investment either directly or indirectly through measures equivalent to expropriation or nationalization (hereinafter referred to as "expropriation"), except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate, and effective compensation; and

(d) in accordance with due process of law and Article 2.

2. The compensation referred to in paragraph 1(c) shall:

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (the date of expropriation);

(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

(d) be fully realizable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation referred to in paragraph 1(c) shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation referred to in paragraph 1(c) — converted into the currency of payment at the market rate of exchange prevailing on the date of payment — shall be no less than:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus

(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

5. Investors of one Contracting Party affected by expropriation shall have a right to prompt review by a judicial or other independent authority of the other Contracting Party of their case and of the valuation of their investments in accordance with the principles set out in this Article.

6. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the Agreement on Trade-Related Aspects of Intellectual Property Rights (the "TRIPS Agreement").(4)

(3) Article 5 (Expropriation and Compensation) shall be interpreted in accordance with the Annexes.

(4) This paragraph shall be applied after the accession of the Republic of Uzbekistan to the World Trade Organization.

## **Article 6. Transfers**

1. Each Contracting Party shall guarantee to an investor of the other Contracting Party the free transfer of all payments relating to an investment into and out of its territory. Such transfers shall include, in particular, though not exclusively:

(a) the initial capital and additional amounts to 'maintain or increase an investment;

(b) the amounts yielded by investments and, in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties, and all kinds of fees;

(c) payments made under a contract, including a loan agreement;

(d) proceeds from the sale or liquidation of all or any part of an investment;

(e) payments made pursuant to Article 4 (Compensation for Losses) and Article 5 (Expropriation and Compensation) ;

(f) payments arising out of the settlement of a dispute under this Agreement; and

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

2. All transfers under this Agreement shall be made in a freely usable currency, without undue restriction or delay, at the market exchange rate prevailing on the date of the transfer.

3. Notwithstanding paragraphs 1 and 2 of this Article, a Contracting Party may delay or prevent a transfer, through the equitable, non- discriminatory, and good faith application of its measures and laws relating to:

- (a) bankruptcy, insolvency, or the protection of the rights of creditors;
- (b) issuing, trading, or dealing in securities;
- (c) criminal or penal offenses; ;
- (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings, including those related to compulsory tax and fees payment.

4. A Contracting Party may adopt or maintain measures inconsistent with paragraphs 1 and 2 of this Article:

- (a) in the event of serious balance-of-payments or external financial difficulties or the threat thereof; or
- (b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary, exchange rate and capital account policies.

5. The measures referred to in paragraph 4 of this Article shall:

- (a) not exceed a period of one year; however, if extremely exceptional circumstances arise such that a Contracting Party seeks to extend such measures, that Contracting Party shall coordinate in advance with the other Contracting Party concerning the implementation of any proposed extension;
- (b) be consistent with the Articles of Agreement of the International Monetary Fund;
- (c) be non-discriminatory;
- (d) not exceed those necessary to deal with the circumstances set out in paragraph 4 of this Article;
- (e) be temporary, and be eliminated as soon as conditions permit;
- (f) not be confiscatory;
- (g) promptly be notified to the other Contracting Party;
- (h) not constitute a dual or multiple exchange rate practice;
- (i) not restrict payments or transfers for current transactions, unless the imposition of such measures complies with the procedures stipulated in the Articles of Agreement of the International Monetary Fund; and
- (j) not restrict payments or transfers associated with foreign direct investment.

## **Article 7. Subrogation**

1. If a Contracting 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 of that Contracting Party in the territory of the other Contracting Party, the other Contracting Party shall recognize:

- (a) the assignment of any right or claim of such investor to the former Contracting Party or its designated agency; and
- (b) the right of the former Contracting 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.

2. The investor referred to in paragraph 1 of this Article shall be precluded from pursuing such rights and claims arising therefrom to the extent of the subrogation.

## **Article 8. Transparency**

1. Each Contracting 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 operation of this Agreement. Where a Contracting Party establishes a policy which is not expressed in its laws or regulations or by any other means listed in this paragraph, but which may affect the operation of this Agreement, that Contracting Party shall promptly publish them or otherwise make them publicly available.

2. Each Contracting Party shall promptly respond to specific questions and provide, upon request, information to the other Contracting Party on matters referred to in paragraph | of this Article.

3. Nothing in this Agreement shall prevent one Contracting Party from requiring an investor of the other Contracting Party, or its investment, to provide routine information concerning that investment solely for informative or statistical purposes. Nothing in this Agreement requires a Contracting Party to furnish or allow access to:

(a) information relating to the financial affairs and accounts of individual customers of particular investors or investments; or

(b) 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 and regulations protecting confidentiality or prejudice the legitimate commercial interests of a particular enterprise or individual.

## **Article 9. Entry and Sojourn of Personnel**

Subject to its laws and regulations regarding the entry and sojourn of aliens, a Contracting Party shall permit natural persons who are investors of the other Contracting Party and personnel employed by investors of that other Contracting Party to enter and remain in its territory for the purpose of engaging in activities connected with investments.

## **Article 10. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through consultations or diplomatic channels.

2. If any dispute cannot be settled within one hundred and eighty (180) days from the date of request for settlement, it shall, at the request of either Contracting Party, be submitted to an ad hoc Arbitral Tribunal in accordance with the provisions of this Article.

3. Such an ad hoc Arbitral Tribunal shall be constituted for each individual case in the following way: Within sixty (60) days from the date of receipt of the request for arbitration, each Contracting Party shall appoint one member of the ad hoc Arbitral Tribunal. These two members shall then select a national of a third State, who on approval of the two Contracting Parties shall be appointed Chairperson of the ad hoc Arbitral Tribunal. The Chairperson shall be appointed within sixty (60) days from the date of the 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, a request may be made by either Contracting Party to the President of the International Court of Justice to make such appointments. If the President is a national of either Contracting Party or otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointments. If the Vice-President is also a national of either Contracting Party or prevented from discharging the said function, the member next in seniority of the International Court of Justice who is not a national of either Contracting Party or is not otherwise prevented from discharging the said function shall be invited to make the appointments.

5. The ad hoc Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding on the Contracting Parties.

6. The ad hoc Arbitral Tribunal shall determine its own procedure.

7. Each Contracting Party shall bear the costs of its own arbitrator and its representation in the arbitral proceedings. The costs of the Chairperson and any remaining costs shall be borne in equal parts by the Contracting Parties. The ad hoc Arbitral Tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the Contracting Parties.

## **Article 11. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. This Article applies to disputes between a Contracting Party and an investor of the other Contracting Party arising in connection with the investment of an investor in the territory of the State of the former Contracting Party, including disputes concerning an alleged breach of an obligation of the former Contracting Party under this Agreement which causes loss or damage to the investor or its investment. This Article shall not apply to cases where the disputing investor holds the nationality of the State of the Contracting Party where the investment is made.

2. The investor and the Contracting Party in whose territory the investments are made shall endeavor to settle the dispute by consultations and negotiations in good faith, and at the same time, by local remedies of the Contracting Party. Such dispute shall be notified in writing by the investor to the Contracting Party. If the dispute cannot be resolved by consultations, negotiations and/or local remedies within one hundred and eighty (180) days from the date on which the written request is notified, the investor may choose to submit the dispute for resolution by arbitration in accordance with this Article under:

- (a) the Convention on the Settlement of Investment Disputes between States and Nationals of other States (the "ICSID Convention"), if the ICSID Convention is available;
- (b) the Additional Facility Rules of the Centre for Settlement of Investment Disputes (the "ICSID Additional Facility Rules"), if the ICSID Additional Facility Rules are available;
- (c) the Arbitration Rules of the United Nations Commission on International Trade Law (the "UNCITRAL Arbitration Rules")(5); or
- (d) if agreed by both parties to the dispute, any other arbitration institution or any other arbitration rules.

3. Each Contracting Party hereby consents to the submission of a dispute to arbitration in accordance with the procedures set out in this Agreement. The consent and the submission of a claim to arbitration under this Article shall satisfy the requirements of:

- (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules with regard to the written consent of the parties to the dispute; and
- (b) Article II of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), for an "agreement in writing."

4. Once the investor has submitted the dispute to one of the arbitration mechanisms provided for in paragraph 2 of this Article, the choice of the procedure shall be final and the rest of mechanisms therein shall not apply.

5. A dispute may be submitted to arbitration ninety (90) days after the date on which notice of intent to do so was received by the Contracting Party which is party to the dispute. The notice of intent shall specify:

- (a) the name and address of the claimant and, where a claim is submitted on behalf of an enterprise, the name, address, and place of incorporation of the enterprise;
- (b) for each claim, the provisions of this Agreement alleged to have been breached and any other related provisions;
- (c) the legal and factual basis for each claim; and
- (d) the relief sought, including the approximate amount of any damages claimed.

6. A dispute shall be submitted to arbitration no later than three (3) years from the date the investor first acquired or should have acquired knowledge of the events which gave rise to the dispute.

7. The provisions of the second sentence of paragraph 2 of this Article shall not apply to a measure of a Contracting Party that falls within the scope of Article 16 (Exceptions on Financial Services). Where an investor of a Contracting Party submits a claim to arbitration under paragraph 2 of this Article, and the respondent invokes Article 16 as a defense, the following provisions shall apply:

- (a) the respondent shall, within one hundred and twenty (120) days of the date the claim is submitted to arbitration under this Article, submit in writing to the ad hoc Joint Committee (6) established by the two Contracting Parties, a request for a joint determination on the issue of whether and to what extent Article 16 is a valid defense to the claim. The respondent shall promptly provide the tribunal, if constituted, a copy of such request. The arbitration may proceed with respect to the claim only as provided in subparagraph (d);
- (b) the ad hoc Joint Committee shall attempt in good faith to make a determination as described in subparagraph (a). Any such determination shall be transmitted promptly to the disputing parties and, if constituted, to the tribunal. The determination shall be binding on the tribunal;
- (c) if the ad hoc Joint Committee, within ninety (90) days of the date by which it has received the respondent's written request for a determination under subparagraph (a), has not made a determination as described in that subparagraph, the tribunal shall decide the issue left unresolved by the ad hoc Joint Committee;

(d) the arbitration referred to in subparagraph (a) shall be suspended during the pendency of the deliberation by the ad hoc Joint Committee and may proceed with respect to the claim:

(i) ten (10) days after the date the determination of the ad hoc Joint Committee has been received by the disputing parties and, if constituted, the tribunal; or

(ii) ten (10) days after the expiration of the ninety-day period extended to the ad hoc Joint Committee in subparagraph (c).

8. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under paragraph 2(b) of this Article. If the disputing parties fail to reach an agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

9. A Contracting Party shall not assert as a defense, counter-claim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to an indemnity, guarantee or insurance contract.

(5) Unless the Contracting Parties otherwise agree, the United Nations Commission on International Trade Law Rules on Transparency in Treaty-based Investor-State Arbitration (UN Doc A/CN.9/783) (the "UNCITRAL Transparency Rules") shall not apply to arbitrations initiated pursuant to paragraph 2(b)Gii) of Article 11. The Contracting Parties shall enter into consultations on the future application of the UNCITRAL Transparency Rules to arbitrations initiated pursuant to paragraph 2(b)iii) of Article 11, upon request of a Contracting Party.

(6) The ad hoc Joint Committee shall be established by the request of the responding Contracting Party invoking the defense referred in Article 16 and shall be composed of Governmental representatives designated by the two Contracting Parties.

10. The arbitral tribunal, in its award, shall set out its findings of law and fact, together with the reasons for its ruling and may, at the request of a party, provide the following forms of relief:

(a) a declaration that the Contracting Party has failed to comply with its obligations under this Agreement;

(b) pecuniary compensation, which shall include interest from, the time the loss or damage was incurred until the payment was or will be made;- .

(c) restitution in kind in appropriate cases, provided that the Contracting Party may pay pecuniary compensation in lieu thereof where restitution in kind is not practicable in the good faith judgment of the responding Contracting Party; and

(d) with the agreement of the parties to the dispute, any other form of relief.

11. Arbitration awards shall be final and binding upon the parties to the dispute. Each Contracting Party shall provide for the enforcement of an award in its territory.

## **Article 12. Application of other Rules**

1. Where a matter is governed simultaneously both by this Agreement and by another international agreement to which both Contracting Parties are parties, nothing in this Agreement shall prevent an investor of one Contracting Party who owns investments in the territory of the other Contracting Party from taking advantage of whichever rules are the more favorable to his case.

2. If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party in accordance with its laws and regulations is more favorable than that accorded by this Agreement, the more favorable treatment shall be accorded.

## **Article 13. Application of the Agreement**

1. This Agreement shall apply to investments in the territory of the State of one Contracting Party, made in accordance with its laws and regulations, by investors of the other Contracting Party, whether prior to, or after the entry into force of the present Agreement.

2. However, this Agreement shall not apply to any disputes concerning investments arisen, or to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.



## **Article 14. Denial of Benefits**

1. A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is an enterprise of such other Contracting Party and to investments of that investor if persons of a non- Contracting Party, directly or indirectly, own or control the enterprise, and the denying Contracting Party adopts or maintains measures with respect to the non-Contracting Party or a person of the non-Contracting Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Agreement were accorded to the enterprise or its investments.

2. A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is an enterprise of that other Contracting Party and to investments of that investor if the enterprise has no substantial business activities in the territory of that other Contracting Party.

## **Article 15. Interpretation of the Agreement**

The Contracting Parties shall consult and issue interpretations with regard to any provision of this Agreement, upon the request of a Contracting Party, if a dispute between the Contracting Parties or between a Contracting Party and an investor of the other Contracting Party concerning the interpretation of this Agreement arises. The interpretations of this Agreement agreed between the Contracting Parties shall be binding on tribunals established under Article 10 (Settlement of Disputes between Contracting Parties) and Article 11 (Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party).

## **Article 16. Exceptions on Financial Services**

1. With respect to the supply of financial services in the territory of a Contracting Party by an investment, the Contracting Party shall not be prevented from adopting or maintaining measures for prudential reasons, including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Contracting Party's commitments or obligations under such provisions.

2. Nothing in this Agreement, with respect to the supply of financial services in the territory of a Contracting Party by an investment, applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies, or exchange rate policies.

3. Notwithstanding Article 6 (Transfers), a Contracting Party may prevent or limit transfers by a financial institution to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory, and good faith application of measures relating to the maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions. For greater certainty, this paragraph does not prejudice any other provision of this Agreement that may permit a Contracting Party to restrict transfers.

4. For greater certainty, nothing in this Agreement shall be construed to prevent a Contracting Party from adopting or enforcing measures necessary to secure compliance with laws or regulations that are not inconsistent with this Agreement, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions.

## **Article 17. Exceptions**

1. Nothing in this Agreement shall be construed:

(a) to require a Contracting Party to furnish any information, the disclosure of which it considers contrary to its essential security interests;

(b) to prevent a Contracting Party from taking any actions which it considers necessary for the protection of its essential security interests:

(1) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment;

(ii) taken in time of war or other emergency in international relations; or

(iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or

(c) to prevent a Contracting Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security; .

(d) to prevent a Contracting Party from adopting, maintaining, or enforcing any nondiscriminatory legal measures:

(i) designed and applied for the protection of human, animal or plant life or health, or the environment;

(ii) related to the conservation of living or non-living exhaustible natural resources.

2. The adoption, maintenance or enforcement of such measures is subject to the requirement that they are not applied in an unjustifiable manner or do not constitute a disguised restriction on investments of investors of the other Contracting Party.

## **Article 18. Taxation**

1. Except as provided in this Article, nothing in this Agreement shall impose obligations with respect to taxation measures.

2. Article 5 (Expropriation and Compensation) shall apply to all taxation measures, except that a claimant that asserts that a taxation measure involves an expropriation may submit a claim to arbitration under Article 10 (Settlement of Disputes between Contracting Parties) or Article 11 (Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party) only if:

(a) the claimant has first referred to the competent tax authorities (7) of both Contracting Parties in writing the issue of whether that taxation measure involves an expropriation; and

(b) within one hundred and eighty (180) days after the date of such referral, the competent tax authorities of both Contracting Parties fail to agree that the taxation measure is not an expropriation.

3. Nothing in this Agreement shall affect the rights and obligations of either Contracting Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency. In the case of a tax convention between the Contracting Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

(7) For the purposes of this Article, "competent tax authorities" means, for the Republic of Korea, the Ministry of Strategy and Finance or National Tax Service; and for the Republic of Uzbekistan, the State Tax Committee.

## **Article 19. Entry Into Force, Duration and Termination**

1. The Contracting Parties shall notify each other in writing of the completion of their internal legal procedures necessary for the entry into force of this Agreement. This Agreement shall enter into force thirty (30) days after the date of receipt of the later notification.

2. This Agreement replaces the Agreement between the Republic of Uzbekistan and the Republic of Korea for the Promotion and Reciprocal Protection of Investments, signed on June 17, 1992 in Seoul, which shall be terminated on the date of entry into force of this Agreement.

3. This Agreement shall remain in force for a period of ten (10) years. Either Contracting Party may give notice of termination of this Agreement not less than one (1) year before it is due to expire. Failing such notice, this Agreement shall continue in force for an indefinite period unless either Contracting Party notifies the other Contracting Party in writing one (1) year in advance of its intention to terminate this Agreement. .

4. In respect of investments made prior to the termination of this Agreement, the provisions of Articles 1 to 18 of this Agreement shall remain in force for a further period of ten (10) years from the date of the termination.

5. The Agreement may be amended by mutual written consent of the Contracting Parties. The amendments shall enter into force in accordance with the same legal procedure prescribed under paragraph | of this Article.

6. Any amendment to or termination of this Agreement shall be effected without prejudice to any rights or obligations accruing or incurred under this Agreement prior to the effective date of such amendment or termination.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Tashkent, on 19 day of April, 2019, in the Uzbek, Korean and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of the Republic of Uzbekistan

For the Government of the Republic of Korea

Elyor Ganiyev

Deputy Prime Minister of the Republic of Uzbekistan

Kang Kyung-wha

Minister of Foreign Affairs of the Republic of Korea

## **ANNEX I . Expropriation**

The Contracting Parties confirm their shared understanding that:

1. An action or a series of actions by a Contracting Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right in an investment.
2. Article 5 (Expropriation and Compensation) addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through the formal transfer of title or outright seizure.
3. The second situation addressed by Article 5 (Expropriation and Compensation) is indirect expropriation, where an action or a series of actions by a Contracting Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
  - (a) The determination of whether an action or a series of actions by a Contracting Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers all relevant factors relating to the investment, including:
    - (i) the economic impact of the government action, although the fact that an action or a series of actions by a Contracting Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;
    - (ii) the extent to which the coven action interferes with distinct, reasonable investment-backed expectations; (8) and
    - (iii) the character of the government action, including its objectives and context. Relevant considerations could include whether the government action imposes a special sacrifice on the particular investor or investment that exceeds what the investor or investment should be expected to endure for the public interest.
  - (b) Except in rare circumstances, such as, for example, when an action or a series of actions is extremely severe or disproportionate in light of its purpose or effect, non-discriminatory regulatory actions by a Contracting Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, the environment, and real estate price stabilization (through, for example, measures to improve the housing conditions for low-income households), do not constitute indirect expropriation. (9)
4. The concept of indirect expropriation is not intended to impugn a governmental measure adopted in the exercise of legitimate regulatory authority by a Contracting Party which is otherwise consistent with other provisions of this Agreement.

(8) For greater certainty, whether an investor's investment-backed expectations are reasonable depends in part on the nature and extent of governmental regulation in the relevant sector. For example, an investor's expectations that regulations will not change are less likely to be reasonable in a heavily regulated sector than in a less heavily regulated sector.

(9) For greater certainty, the list of "legitimate public welfare objectives" in subparagraph (b) is not exhaustive.

## **ANNEX II. Taxation and expropriation**

The determination of whether a taxation measure, in a specific fact situation, constitutes an expropriation requires a case-by-case, fact-based inquiry that considers all relevant factors relating to the investment, including the factors listed in Annex I and the following considerations:

(a) the imposition of taxes does not generally constitute an expropriation. The mere introduction of a new taxation measure or the imposition of a taxation measure in more than one jurisdiction in respect of an investment generally does not in and of itself constitute an expropriation;

(b) a taxation measure that is consistent with internationally recognized tax policies, principles, and practices should not constitute an expropriation. In particular, a taxation measure aimed at preventing the avoidance or evasion of taxation measures generally does not constitute an expropriation;

(c) a taxation measure that is applied on a non-discriminatory basis, as opposed to a taxation measure that is targeted at investors of a particular nationality or at specific taxpayers, is less likely to constitute an expropriation; and.

(d) a taxation measure generally does not constitute an expropriation if it was already in force when the investment was made and information about the measure was publicly available.