

**Agreement between the Government of the Republic of Kazakhstan and the Government of the United Arab Emirates on Promotion and Reciprocal Protection of Investments**

The Government of the Republic of Kazakhstan and the Government of the United Arab Emirates hereinafter referred to as "Contracting Parties",

Desiring to create favorable conditions for the greater economic cooperation between them and in particular for investments of the investor of one Contracting Party in territory of the state of the other Contracting Party,

Recognizing necessity to promote and to protect investments of investors and to stimulate inflow of investments and the individual business initiative in accordance with national legislation of the Contracting Party in whose territory the investment is made with the purpose of economic prosperity of both Contracting Parties,

Taking into consideration that this Agreement shall not apply to the pre- establishment of the investment

Have agreed as follows:

## **Article 1. Definitions**

1. The term "investments" means any kind of assets invested directly or indirectly by a Contracting Party or by an investor of one Contracting Party in territory of the other Contracting Party in accordance with the national legislation of the state of the latter Contracting Party in the entrepreneurial purposes and shall include in particular, but not exclusively:

- a) movable and immovable property and any other property rights, such as rent, liens and mortgage;
- b) shares, bonds, debentures of a company and other forms of participation in companies;
- c) intellectual property rights which are protected under the national legislation of the Contracting Party in whose territory the investments are made, including copyrights, trademarks, patents, industrial samples and technical processes, know-how, commercial secrets.
- d) business concessions which are given according to the law or contract. Natural resources shall not be covered by this Agreement;

Investment shall not include provision of credit in connection with commercial transactions such as trade financing and commercial loan, for the sale of goods or services.

Any change of the form in which the assets are reinvested shall not affect their character as an investment provided that such change is not contrary to approval granted.

2. The term "investor" means physical person who is a citizen of the state of one Contracting Party and carries out investments in the territory of the other Contracting Party according to the national legislation of the state of the latter and provisions of this Agreement:

- a) in respect of the Government of the Republic of Kazakhstan:
  - i. the Kazakhstan national;
  - ii. legal person created and registered according to the national legislation of the Republic of Kazakhstan and carrying out investment activity;
- b) in respect of the Government of the United Arab Emirates:
  - i. the UAE national;
  - ii. federal, local governments and their institutions;

iii. any legal person or other entity legally constituted under the national legislation of the United Arab Emirates and carrying out investment activity.

3. The term "returns" means the assets received as a result of realization of the investments, including profits, interests, dividends, royalty, license fees and other compensation.

4. The term "territory" means:

a) in respect of the Republic of Kazakhstan:

territory of the Republic of Kazakhstan, over which the Republic of Kazakhstan exercises its sovereignty, and the area within which the Republic of Kazakhstan exercises the sovereignty and extends the jurisdiction according to the national legislation of the Republic of Kazakhstan and international law.

b) in respect of the United Arab Emirates:

territory of the United Arab Emirates and its territorial sea, airspace and submarine areas over which the United Arab Emirates exercises in conformity with international law and the law of United Arab Emirates sovereign rights, including the Exclusive Economic Zone and the mainland and islands under its jurisdiction in respect of any activity carried on in connection with the exploration for or the exploitation of the natural resources.

5. The term "freely convertible currency" means currency, which is widely used for realization of payments at the international transactions and freely traded in international currency markets.

6. The term "national legislation" means laws, decrees, regulations, rules and other legal acts of the states of the Contracting Parties.

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

1. In accordance with its national legislation each Contracting Party shall promote and create favorable conditions in its territory for investments of investors of the other Contracting Party for attaining its development goals.

2. The Contracting Parties promote formation and establishment of corresponding joint legal persons between investors of the Contracting Parties for establishment, development of investment projects in various economic sectors according to national legislation of the host Contracting Party.

## **Article 3. Protection of Investments**

1. Investments by investors of either Contracting Party and returns shall enjoy full protection and security in the territory of the other Contracting Party in a manner consistent with national legislation and this Agreement and applicable rules of international law. Without prejudice to its WTO terms of membership and commitments, neither Contracting Party shall in any manner impair by arbitrary, unreasonable or discriminatory measures, the management, preservation, maintenance, use, enjoyment or any other form of disposition of investments.

2. Full protection and security shall not create any obligation to the Contracting Party other than what the host state accords to its own nationals and other aliens.

## **Article 4. National Treatment and the Most Favored Nation Treatment**

1. Each Contracting Party shall accord to investors of the other Contracting Party both their investments and returns from investments a treatment not less favorable, than a treatment which it accords to its investors and their investments concerning the management, maintenance, use, enjoyment or any other form of disposition of investments if otherwise is not provided by national legislation.

2. The Contracting Party in accordance with its national legislation shall reserve the right to identify the sensitive sectors of economy and/ or other related activities that shall be limited or excluded.

3. Each Contracting Party shall accord to investors of the state of the other Contracting Party, their investments and returns from investments treatment no less favorable; than treatment, which it accords to investors of the third country, their investments and returns from investments with regard to the management, maintenance, use, enjoyment or any other form of disposition of investments.

4. Provisions of this Agreement should not be interpreted as obliging the Contracting Party to accord to investors of the

state of the other Contracting Party both their investments and returns from investments existing or future benefit of any treatment, preference or the privilege which is growing out from:

a) membership in a zone of free trade, customs union, monetary union, economic union, common market of a regional or bilateral cooperation, or similar international agreements in which either Contracting Party is or may become a party;

b) any international agreement or national legislation of the state of the Contracting Party concerning tax issues.

5. Contracting Parties reserve the right to establish or maintain exceptions necessary to ensure national security.

6. For more certainty, the most favored nation treatment shall not apply to any procedural and judicial matters.

## **Article 5. Compensation for Damage and Losses**

1. When investments made by investors of either Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot or other similar events in the territory of the state of the other Contracting Party, the latter Contracting Party shall accord concerning to restitution, compensation or other indemnification, a treatment not less favorable, than given to national investors or investors of any third state.

2. Any investor of the state of the Contracting Party, who in any of the cases mentioned in paragraph (1) of this Article, suffers losses owing to:

a) requisitions of its investments or its part by forces or authorities of the other Contracting Party, or

b) destructions of the investments or its part by forces or authorities of the state of the other Contracting Party which was not required by necessity of the situation,

should be given a compensation in accordance to paragraph (1) of this article by the latter Contracting Party in respect of restitution, indemnification, or compensation in accordance with the national legislation of its state which should be adequate, prompt and effective.

## **Article 6. Nationalization and Expropriation**

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated, confiscated or subjected to direct or indirect measures having effect equivalent to nationalization, expropriation or confiscation (hereinafter referred to as "expropriation") except for:

a) public purposes;

b) in non- discriminatory way;

c) under due process of law;

d) with payment of adequate, prompt and effective compensation according to paragraph (3) of this Article.

2. The investor shall have the right to refer to the administrative or judicial bodies to make sure that expropriation has been made in accordance with the national legislation of the Contracting Party hosting the investments.

3. Compensation arising out from expropriation shall amount to the actual value of the expropriated investments and shall be determined on the basis of the fair market value of the expropriated investments at the time immediately before the expropriatory action was taken or the impending expropriation became publicly known, whichever is the earlier. The market value should be determined according to the national legislation of the Contracting Party hosting the investments.

4. Compensation should be in a transferable currency and should be paid without any delay. It should include interest under the commercial rate established on a market basis for currency of payment from the date of confiscation or expropriation of properties until the date of payment.

5. Provisions of paragraph (1) of this Article also should be applied to the current returns of investments and proceeds from liquidation in case of liquidation.

6. It is understood that it is not the intention of both Contracting Parties to nationalize or expropriate investments of the other Contracting Party in their territories. The Contracting Parties agreed to consider granting additional guarantees from expropriation and nationalization for each investment project within a separate agreement signed by the Contracting Parties.

## **Article 7. Transfer of the Capital and Returns**

1. Each Contracting Party in which territory the state hosting the investments made by investors of the state of the other Contracting Party, after fulfillment of all tax obligations with due consideration to the DTA Agreement which was signed between the two Contracting Parties on the 22nd December 2008, shall guarantee to these investors transfer of payments related to investments of these investors in accordance with the national legislation of the state of the Contracting Party which includes:

- a) the initial capital and any additional capital for the maintenance, management and development of the investments;
- b) returns;
- c) payments under a contract made pursuant to a loan agreement;
- d) proceeds from sale or liquidation of the complete or any part of the investments, including shares;
- e) earnings and other remuneration of personnel engaged from abroad in connection with the investments;
- f) payments of compensation pursuant to Articles 5 and 6.

2. Transfers of payments under paragraph (1) shall be affected without delay or restriction and, in a freely convertible currency. In case of undue delay in effecting the required transfers, the investor affected shall be entitled to receive interest for the period of such delay at the prevailing market rate.

3. Transfers shall be made according to the market rate of exchange of the state hosting the investments on the date of transfer.

## **Article 8. Restriction of Transfer**

Notwithstanding the provisions of Article 7 a Contracting Party may prevent temporary a transfer through the equitable, non-discriminatory and good faith application of the national legislation after prior notification of the other Contracting Party relating to:

- 1) bankruptcy, insolvency or protection of the rights of creditors;
- 2) issuing, trading or dealing with securities;
- 3) maintenance of execution of orders or judgments in judicial or administrative processes;
- 4) accepting the protective measures for the necessary period of time in exclusive circumstances as serious difficulties with the balance of payments, external financial difficulties without violating the Articles of Agreement regarding movement of capital of the International Monetary Fund, adopted on 22 July 1944 at Bretton Woods.

## **Article 9. Subrogation**

1. If the Contracting Party or its authorized body carries out payments according to guarantee (insurance contract) given concerning investments of the investor in the territory of the other Contracting Party, that the other Contracting Party should admit:

- a) transition of any rights or claims of such investor to the first Contracting Party or its designated body according to the legislation or in accordance with insurance contract,
- b) that the first Contracting Party or its designated body is authorized to realize the rights and claims in the same manner as their predecessor,

and should accept the obligations connected to investments on the basis of subrogation.

2. Rights or claims, stipulated in paragraph 1 of the present Article should not exceed initial rights or requirements of the investor.

3. Subrogation shall take place after the prior consent of the Contracting Party in whose territory of the state the investment is made.

## **Article 10. Settlement of Investment Disputes between an Investor and the**

## **Contracting Party**

1. Any dispute concerning investments between one Contracting Party and an investor of the other Contracting Party shall be settled amicably through negotiations, consultations, mediation or developing any other mechanism for settlement of dispute.
2. To start negotiations, the investor shall deliver to the Contracting Party a written notice. The notice shall specify:
  - a) the name and address of the disputing investor;
  - b) the provisions of this Agreement which have been breached according to the investor;
  - c) the factual and legal basis for the claim;
  - d) the remedy sought and the amount of damages claimed.
3. If dispute cannot be settled during six (6) months from the date of its occurrence in writing, at discretion of the parties in dispute can be directed on consideration to:
  - a) competent courts of the Contracting Party, in which territory the investments are made, or
  - b) arbitration of the Center for the Settlement of Investment Disputes (ICSID) established in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signing in Washington, D.C. on March 18, 1965.
4. Each Contracting Party hereby gives the consent to representation of dispute between it and the investor of the state of the other Contracting Party in arbitration according to this Article.
5. Either of the Contracting Parties being the participant in dispute cannot raise objection at any stage of arbitration procedures or executions of the arbitral award, or to specify that fact, that the investor being the Contracting Party in dispute, has received the compensation covering a part or all losses by virtue of insurance.
6. The arbitral tribunal's decision is final and binding providing that the requirement of articles from 48 to 53 of the ICSID Convention is fulfilled. Each Contracting Party shall ensure the recognition and enforcement of an arbitral award in accordance with the laws of their states.
7. The decision is executed according to the national legislation of the state of the Contracting Party in which territory the decision is carried out by competent body of the state of the Contracting Party.

## **Article 11. Settlement of Investment Disputes between Contracting Parties**

1. Disputes between the Contracting Parties concerning interpretation and application of this Agreement should be resolved through diplomatic channels, by negotiations and consultations.
2. If disputes between Contracting Parties cannot be settled within six (6) months after receiving of the first written request about negotiation and consultation in accordance with paragraph (1) of this article, the dispute shall be upon the request of either Contracting Party be submitted to an arbitral tribunal that consist of three members.
3. The Arbitral Tribunal shall be constituted for each case as follows: Within two (2) months from the official request for arbitration, each Contracting Party shall appoint one arbitrator. Then two of these arbitrators shall appoint one national of the third Party as Chairman of the Tribunal, after agreement of both Contracting Parties. The Chairman shall be appointed within two (2) months following the date of appointment of two other arbitrators.
4. If within the periods specified in paragraph (3) the necessary appointments have not been made, a Contracting Party may invite the president of the International Court of Justice, in a personal and individual capacity, to make the necessary appointments. If the President is a national of a State cannot be regarded as a neutral and relation to the dispute, or is otherwise prevented from discharging the said function, the Vice-President or the next most senior member who is not disqualified on that ground or otherwise prevented from discharging the said function, shall make the appointment.
5. The arbitration tribunal makes its decision by the majority of votes. The decision of tribunal is final and binding on both Contracting Parties. Each Contracting Party bears the cost of the member appointed by it and its representation in arbitration process. Both Contracting Parties shall bear the fees of Chairman as well as other costs, which shall be equally shared by both Contracting Parties. In all other cases the arbitration tribunal defines own rules of procedure.

6. The award shall be issued in writing and shall contain the applicable factual and legal findings and shall be delivered to each Contracting Party.

## **Article 12. Application to Investments**

This Agreement is applied to all investments which have been carried out by investors of any Contracting Party in the territory of the other Contracting Party before and after coming into force of this Agreement, and should not be applied to any dispute or claim concerning investments which has arisen and (or) has been settled before entry into force of this Agreement.

## **Article 13. Consultation**

The Contracting Parties shall hold consultations on any matter relating to the implementation or application of this Agreement, including on settlement of investment disputes. These consultations shall be held at the request of one of the Contracting Parties at a place and time to be agreed upon through diplomatic channels.

## **Article 14. Amendments**

1. By a mutual consent of the Contracting Parties to this Agreement amendments made out by the separate protocol being integral parts of this Agreement.

2. Proposals of either Contracting Party to make amendments to this Agreement should be submitted in the written form by diplomatic channels explaining the grounds on which the amendment shall be made.

## **Article 15. Prohibition of Performance Requirements**

Without prejudice to its WTO terms of membership and commitments, neither Contracting Party shall in its territory impose mandatory measures on investments by investors of the other Contracting Party, concerning the purchase of materials, means of production, operation, transport, marketing of its products or similar orders having discriminatory effect.

## **Article 16. Denial of Benefits**

1. The Contracting Party may deny the benefit of this Agreement for an investor if he acquires the nationality of a third Party for the sake of getting the benefit of this Agreement which will not be available to him otherwise by creating a legal entity for such purpose.

2. The benefit of this Agreement may be also denied for an investor who invests through intermediates.

## **Article 17. Entry Into Force**

This Agreement shall enter into force on the fifteenth (15) day after the date of receipt by diplomatic channels one of the latter notifications of fulfillment of internal state procedures necessary for entry into force of this Agreement.

## **Article 18. Duration and Termination**

1. This Agreement is concluded for the period of ten (10) years and shall be automatically prolonged for another ten (10) years periods, shall remain in force unless one (1) year before the expiration of the initial or any subsequent ten (10) years periods, either Contracting Party notifies in writing through diplomatic channels the other Party of its intention to terminate this Agreement.

2. Concerning the investments which have been carried out before date of the termination of this Agreement, provisions of Article 1-18 shall remain in force for further ten (10) years period from the date of the termination of this Agreement.

Done at Abu Dhabi, 24.03.2018 in duplicate each in the Kazakh, Arabic, English and Russian languages, and all texts are equally authentic. In case of various interpretations of provisions of this Agreement, Contracting Parties shall address to the text in English.

**For the Government of the Republic of Kazakhstan**

(signature)

**For the Government of United Arab Emirates**

(signature)