

AGREEMENT BETWEEN MONGOLIA AND ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of Mongolia and the Government of

Desiring to intensify economic cooperation to the mutual benefit of both States,

Intending to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing the need to promote and protect foreign investments with the aim to foster the economic prosperity of both States,

Have agreed as follows:

Article 1. DEFINITIONS

For the Purpose of this Agreement:

1. the Term "investor" Refers with Regard to Either Contracting Party To

- a) natural persons who, according to the law of that Contracting Party, are considered to be its nationals;
- b) legal entities, including companies, corporations, business associations and other organisations, which are constituted or otherwise duly organised under the law of that Contracting Party and have their seat, together with real economic activities, in the territory of that same Contracting Party;
- c) legal entities established under the law of any country which are, directly or indirectly, controlled by nationals of that Contracting Party or by legal entities having their seat, together with real economic activities, in the territory of that Contracting Party.

2. The term "investments" shall include every kind of assets and particularly:

- a) mobile and immobile property as well as any other rights in rem, such as mortgages, pledges;
- b) shares, parts or any other kinds of participation in companies;
- c) claims to money, including bonds and debentures, or to any performance having an economic value;
- d) copyrights, industrial property rights, technological processes, know-how and goodwill;
- e) business concessions and other rights to conduct economic activities conferred by law or under contract, including concessions to search for, extract or exploit natural resources.

3. The term "return" means the amounts yielded by an investments and in particular, though not exclusively, includes profits, interests, dividends, royalties and fees.

Article 2. SCOPE OF APPLICATION

The present Agreement shall apply to investments in the territory 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 Agreement.

Article 3. PROMOTION, ADMISSION

1. Each Contracting Party shall in its territory promote as far as possible investments by investors of the Contracting Party

and admit such investments in accordance with its laws and regulations.

2. When a Contracting Party shall have admitted an investment on its territory it shall grant the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Contracting Party shall, whenever needed, endeavour to issue the necessary authorizations concerning the activities of consultants and other qualified persons of foreign nationality.

Article 4. PROTECTION, TREATMENT

1. Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension or disposal of such investments.

2. Each Contracting Party shall ensure fair and equitable treatment within its territory of the investments of the investors of the other Contracting Party. This treatment shall not be less favourable than that granted by each Contracting Party to investments made within its territory by its own investors, or than that granted by each Contracting Party to the investments made within its territory by investors of the most favoured nation, if this latter treatment is more favourable.

3. If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, a customs union, a common market or a similar regional organization or by virtue of an agreement on the avoidance of double taxation, it shall not be obliged to accord such advantages to investors of the other Contracting Party.

Article 5. FREE TRANSFER

1. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall guarantee those investors the unrestricted transfer of the payments relating to these investments, particularly of:

- a) returns;
- b) repayments of loans;
- c) amounts assigned to cover expenses relating to the management of the investment;
- d) royalties and other payments deriving from rights enumerated in Article 1 Paragraph 2, Letters C, D and E of this Agreement;
- e) additional capital necessary for the maintenance or development of the investment;
- f) the proceeds of the sale or of the partial or total liquidation of the investment, including possible increment values;
- g) earnings of natural persons.

2. Transfers shall be effected without delay in a freely convertible currency. Such transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

Article 6. DISPOSSESSION, COMPENSATION

1. Neither of the Contracting Party shall take, either directly or indirectly, measures of expropriation, nationalization or any other measures having the same nature or the same effect against investments of investors of the other Contracting Party, unless the measures are taken in the public interest, on a non discriminatory basis, and under the due process of law, and provided that provisions be made for effective and adequate compensation. The amount of compensation, interest included, shall be settled in the currency of the country of origin of the investment and paid without delay to the person entitled thereto without regard to its residence or domicile.

2. The investors of the Contracting Party whose investments have suffered losses due too a war or any other armed conflict, revolution, state of emergency or rebellion, which took place in the territory of the other Contracting Party shall benefit, on the part of this latter, from a treatment in accordance with Article 4, paragraph 2, of this Agreement as regards restitution, indemnification, compensation or other settlement.

Article 7. PRINCIPLE OF SUBROGATION

Where one Contracting Party has granted any financial guarantee against noncommercial risks in regard to an investment

by one of its investors in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party by virtue of the principle of subrogation to the rights of the investor when payment has been made under this guarantee by the first Contracting Party.

Article 8. DISPUTES BETWEEN a CONTRACTING PARTY AND AN INVESTOR OF THE OTHER CONTRACTING PARTY

1. With a view to an amicable solution of disputes between a Contracting Party and an investors of the other Contracting Party and without prejudice to Article 9 of this Agreement, consultations will take place between the parties concerned.
2. If these consultations do not result in a solution within six months from the date of request for consultations, the investor may submit the dispute, at his choice, for settlement to:
 - a) the International Center for Settlement of Investment Disputes(ICSID) instituted by the Convention on the settlement of investment disputes between States and nationals of other States, opened for signature at Washington, on 18 March 1965;
 - b) an ad hoc tribunal which unless otherwise agreed upon by the parties to the dispute shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).
3. Each Contracting Party hereby consents to the submission of an investment dispute to international arbitration.
4. The Contracting Party which is a party to the dispute shall, at no time whatsoever during the settlement procedure or the execution of the sentence, raise as an objection the fact that the investor has received, by virtue of an insurance contract, a compensation covering the whole or part of the incurred damage.
5. A company which has been incorporated or constituted according to the laws in force on the territory of the Contracting Party and which, prior to the origin of the dispute, was under the control of nationals or companies of the other Contracting Party, is considered, in the sense of the Convention of Washington and according to its Article 25 (2) (b), as a company of the latter.
6. Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to international arbitration unless the other Contracting Party does not abide by and comply with award rendered by such arbitral tribunal.

Article 9. DISPUTES BETWEEN CONTRACTING PARTY

1. Disputes between Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.
2. If both Contracting Party cannot reach an agreement within six months after the beginning of the dispute between themselves, the latter shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a chairman who shall be a national of a third State.
3. If one of the Contracting Party has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.
4. If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.
5. If, in the cases specified under paragraph 3 and 4 of this Article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or if he is a national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.
6. Subject to other provisions made by the Contracting Party, the tribunal shall determine its procedure.
7. Each Contracting Party shall bear the cost of the arbitrator it has appointed and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.
8. The decisions of the tribunal are final and binding for each Contracting Party.

Article 10. OTHER COMMITMENTS

1. If the provisions in the legislation of other Contracting Party or rules of international law entitle investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such provisions shall to the extent that they are more favourable prevail over this Agreement.
2. Each Contracting Party shall observe any obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

Article 11. FINAL PROVISIONS

1. This Agreement shall enter into force on the day when both Governments have notified each other that they have complied with the constitutional requirements for the conclusion and entry into force of international agreements, and shall remain binding for a period of ten years. Unless written notice of termination is given six months before the expiration of this period, the Agreement shall be considered as renewed on the same terms for a period of two years, and so forth.
2. In case of official notice as to the termination of the present Agreement, the provisions of Article 1 to 10 shall continue to be effective for a further period of ten years for investments made before official notice was given.

Done at Å» on , in duplicate, in the Mongolian, and English languages, each text being equally authentic. In case of divergence the English text shall prevail.

FOR THE GOVERNMENT FOR THE GOVERNMENT OF MONGOLIA OF

Volume IX, Part Three. Prototype Instruments