

# **AGREEMENT**

**Nr. 2002**

**From**

**07.11.2002**

## **Between the Government of the Moldovan and The Government of the Kyrgyz Republic on the promotion and reciprocal protection of investments**

Government of the Kyrgyz Republic and the Government of the Republic of Moldova, hereinafter referred to as "Contracting Party"

Desiring to intensify economic cooperation for the sake of long-term mutual benefit of both countries,

Intending that create and maintain favorable conditions for investments to investors of the other country, and

Recognizing that the promotion and reciprocal protection of investments under this Agreement will stimulate constructive initiatives in this area,

have agreed as follows:

### **Article 1. Definitions**

For the purpose of this Agreement:

1) The term "investment" shall mean all kinds of assets invested in connection with economic activity by investors of a Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations and shall include in particular, but not exclusively:

a) convertible currency or other foreign currency purchased by the Parties and subject to banking operations;

b) movable and immovable property and other property rights as mortgages, property maintenance to the debts, pledge and similar rights;

c) shares, securities and corporate debt securities or property of these legal entities;

d) any rights or other cash requirements receivables bonds, which have an economic value related to an investment;

e) intellectual property rights, including copyrights, trademarks, patents, industrial samples, processes, know-how, trade secrets, trade names and goodwill related to an investment;

f) any right conferred by law or required by the contract and any licenses and permits in accordance with the law, including concessions for exploration, extraction, and exploitation of natural resources;

Any change to the range of investment goods does not affect their investment.

2) The term "investor" means any natural or legal person who invests in the territory of the other Contracting Party:

a) the term 'person' means any natural person who holds the citizenship of one Contracting Party in accordance with its legislation;

b) the term "person" means any State to the Contracting Parties:

- Any organization established in accordance with the legislation of each of the Contracting Parties are entitled to make investments in the territory of the other Contracting Party;

- Any body of persons having no legal personality but considered as a company under the laws of.

3) The term "benefits" means cash amounts derived from the investment and includes, in particular, but not exclusively: profits, movable property, tangible capital, shares, dividends, royalties, payments for services.

4) The term "territory" means in respect of each State of the Contracting Parties territory under the sovereignty of and sea areas and districts submarine, on which the Contracting Parties shall, in accordance with international rights, sovereignty, sovereign rights and jurisdiction.

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

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

2) Investments Either Contracting State investors will seize the attitude fair and equitable and shall enjoy full protection and security in the territory of the other Contracting Party.

## **Article 3. National Treatment and Most Favoured Nation Treatment**

1) Each Contracting Party shall grant far behind; his state investments by investors of the other Contracting Party a regime that is fair and equitable and not less favorable than that accorded to investments by investors of his state or any third state, if it is more favorable, in line law of the Contracting Party in whose territory the investments are made.

2) cation Contracting Party grants on its territory of investors of the other Contracting Party, as regards management, maintenance, use, obtain profit and disposition of their investments treatment fair and equitable and not less favorable than that it accords to its own investors or investors of any third country in which independence is more favorable.

3) The provisions of paragraphs 1 and 2 of this article shall not be interpreted to require a Contracting Party to extend to investors of the other Contracting Party benefit any scheme, preference or privilege which may be extended by the last Contracting Party, resulting from:

a) any customs union, free trade area, monetary union or similar international agreements that affect the regime of collaboration investment, or other forms of regional cooperation, the State of either Contracting Party is a party can be part cau.

b) any international agreement or arrangement relating wholly or general taxation.

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

1) In the case in which investors of the State of either Contracting Party suffer losses as a result of war, armed conflict, state of emergency national coup, insurrection, conspiracy or other similar actions on the territory of the other Contracting Party, they will be granted State Contracting Party to the last regime on refunds, compensation, compensation or other decisions, a regime no less favorable than that accorded by the latter Contracting Party State to its own investors or investors of any third state.

2) Without prejudice to paragraph 1 of this Article, investors of a Contracting Party, which in any event referred to in this paragraph, suffer losses in the territory of another Contracting Party resulting from:

a) seizure of their property by its forces or authorities,

b) destruction of their property by its forces and authorities who

Were not caused by warfare or were not imposed by the necessities of the situation, will be given a fair and appropriate compensation for losses incurred during the period of seizure or as a result of damage to property. Payments for losses will be transferred freely convertible currency without delay.

## **Article 5. Expropriation**

1) Investments State investors of each Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose. Expropriation will be done according to legal procedure in a discriminatory manner against fees prompt, adequate and effective. The compensation shall be equivalent to the market value of investments, directly at the time of expropriation or expropriation became public danger c`nd known dob`nda will include the date of expropriation at a reasonable commercial rate will be performed without int`rzieri, will be effectively realizable and freely transferable in freely convertible currency.

2) The affected investor shall be entitled to the immediate review of the case or the court or other independent state that Contracting Party and the estimation of investments in accordance with the principles set out in this Article.

3) The provisions of paragraph 1 of this Article shall also be applied in the case when State Contracting Party expropriates the assets of a company that received the status of a public or created under the laws in force in any part of its own territory and the the other Contracting party has investors shares in.

## **Article 6. Transfers of Funds**

1) The Contracting Parties shall guarantee the transfer of payments related to investments and benefits, according to the legislation of the states of the Contracting Parties. Transfers will be made in freely convertible currency at the market exchange rate applied on the transfer date without any restrictions and unjustified delays. Such transfers shall include in particular, but not exclusively:

- a) capital and additional cash amounts to maintain or increase investments;
- b) profits, interest, dividends and other current income;
- c) funds for repayment of loans;
- d) royalties or payments for services;
- e) profits from the sale or liquidation of investments;
- f) remuneration of individuals in accordance with laws and regulations of the Contracting Party in whose territory the investments were made.

2) For the purposes of this Agreement which will use the official exchange rates established in accordance with the current legislation of the Contracting Parties states that current arrangements are valid for the date of transfer, unless otherwise agreed to.

## **Article 7. Subrogation**

1) If a Contracting Party or mediator appointed by it makes payments to its own investors under a guarantee, which it has granted to an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

- a) transmission, or the law, or under a legal agreement in this country, of any right or claim by the investor to the first Contracting Party, the mediator appointed by it and the fact
- b) that the first Contracting Party or mediator appointed by it, is entitled to exercise rights of subrogation and claims promulgation investor concerned and assume obligations related to this investment.

2) The rights or claims obtained by subrogation shall not exceed the original rights or claims of the investor.

## **Article 8. Disputes between a Contracting Party and an Investor of the other Contracting Party**

1) Any dispute which may arise between an investor of State Contracting Party and the other Contracting Party regarding an investment in the territory of that Contracting Party shall be subject to negotiations between the parties to the dispute.

2) If any dispute between an investor of State Contracting Party and the other Contracting Party can not be settled in this way within six months from the day of submission desire in writing, the investor has the right to send this case to:

- a) International Centre for Settlement of Investment Disputes (ICSID), considering the Convention for the Settlement of Investment Disputes between States and nationals of other States, opened for signature in Washington on March 18, 1965, when both Contracting Parties have acceded to this Convention, or
- b) an arbitrator or "ad hoc" arbitrators international tribunal, made under the Rules of Arbitration Procedure of the United Nations Commission for International Trade Law (UNCITRAL). The parties to the dispute, may modify these rules through a deal in writing. Arbitration shall be final and binding on both Parties to the dispute.

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

- 1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled through mutual consultations and negotiations.
- 2) If the dispute can not thus be settled within six months after its inception, at the request of either Contracting Party, the dispute shall be submitted to the Court of Referees in accordance with this Article.
- 3) Court Judges shall be constituted for each case in the following way: within 2 months from receipt by one of the Contracting Parties of the application in writing to the other Contracting Party regarding the submission of the dispute to arbitration, each Contracting Party shall appoint each member of this Court. These two members of the Tribunal will then elect a national of a third state, after approval by the Contracting Parties shall be appointed as Chairman of the Tribunal (the "Chairman"). The Chairman shall be appointed within 3 months from the date of appointment of the other two members of the Court of Referees.
- 4) If within any of the terms established in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of other agreements, invite the President of the UN International Tribunal for conducting the necessary nominations. If it is established that the President is a citizen of a Contracting Party or if there are other reasons that prevent him from exercising this function, the Vice President will be invited to carry out the necessary nominations. If it is established that and Vice President is a citizen of the State of either Contracting Party or if he can not exercise this function, will be invited to make appointments in question next member of the International Tribunal to the UN, in hierarchical order, which does not hold citizenship of one of them, Contracting.
- 5) Court Referee will take the decision by majority vote. These decisions shall be final and binding upon the Contracting Parties. Each Contracting Party shall bear the costs for its members Tribunal Referees and its representative in the court of Arbitration; costs related to the Chairman and other costs shall be borne by the Contracting Parties in equal shares. Court Judges will determine its own procedure and may by its decision to determine which of the Contracting Parties shall bear the major part of expenditure.

## **Article 10. Application of other Rules and Special Commitments**

- 1) If the subject is governed simultaneously by this Agreement and by another international agreement, the signatories of which are the states of both Contracting Parties, nothing in this Agreement shall prevent the Contracting Parties or any investors thereof, possessing investments on the territory of another Contracting Party, take advantage of those rules that are more favorable to his case.
- 2) If the regime to be granted by the State of either Contracting Party to investors of the other Contracting Party under the laws and its rules or specific provisions of contracts is more favorable than the regime granted in this Agreement shall be given the more favorable rules.

## **Article 11. Introduction of Amendments and Additions**

Following the mutual understanding of the Contracting Parties to this Agreement may be amended and supplemented, which is perfected in a Protocol which constitutes an integral part of this Agreement and shall enter into force under the provisions of Article 12 of this Agreement.

## **Article 12. Entry Into Force, Duration and Expiry**

- 1) This Agreement shall enter into force on the date of the last notification in writing through diplomatic channels, of the completion by the Contracting Parties of internal procedures necessary for entry into force.
- 2) This Agreement is concluded for a period of ten years. His action will be automatically extended for the next five-year periods, unless one of the Contracting Parties shall notify in writing the other Contracting Party through diplomatic

channels, at least six months before the expiry of the validity of the present Agreement, of its intention to terminate it.

3) With respect to investments made before the termination of this Agreement, its provisions shall continue to be valid for a period of ten years from the date of termination.

Signed in Bishkek, 7 November 2002 in duplicate, in the Moldovan, Kyrgyz and Russian languages, all texts being equally authentic.

In case of divergence of interpretation or application of this Agreement, the text in Russian shall prevail.