Agreement between the Government of the Republic of Kazakhstan and Government of Ukraine on the promotion and mutual protection of investments

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

Wishing to strengthen economic cooperation on a long term basis for mutual benefit of both Contracting Parties,

With the intention to create and maintain favorable conditions for investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and reciprocal protection of investments under this Agreement,

Will stimulate business initiative in this field,

Have agreed as follows:

Article 1. Definitions

For this agreement:

1. The term "investment" will cover any kind of asset invested in connection with the investment by the investors of one Contracting Party to economic activity on the territory of the other Contracting Party in accordance with the legislation of the latter and include, in particular, but not exclusively:

a) movable and immovable property, as well as any other rights such as mortgages, rights to maintaining, collateral for the loan and similar rights;

b) shares, stocks and debentures of legal persons or property of some of these entities;

c) loans, loans, trust banking and financial contributions and other monetary claims relating to the implementation of investments;

d) intellectual property rights, including copyrights, trademarks, patents, industrial designs, technological processes, know-how, trade secrets, trade names and goodwill associated with an investment;

e) licenses and permits, respectively law, including concessions to explore, production, development and exploitation of natural resources;

f) reinvestment of income and payments of principal and interest on credit agreements.

Any change of the form in which assets are invested shall not affect their character as an investment.

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

a) The term "natural person" means any natural person who is citizen or permanent resident in any of the Contracting Parties in accordance with its laws;

b) The term "legal person" means with respect to any Contracting Party any institution, company or organization, established in accordance with the current legislation of each of the Contracting Parties and which have the right to invest in the territory of the other Contracting Party;

3. The term "returns" means the amount of money received as a result of investments and includes, in particular, but not exclusively, income, interest, capital gains, stocks, dividends, royalties and fees for services.

4. The term "territory" means in respect of each Contracting Party, the territory under its sovereignty, as well as marine and underwater areas in which each Contracting Party shall, excercise sovereignty rights and jurisdiction in accordance with international law.

Article 2. Application of this Agreement

The terms of this Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party both before and after the entry into force of this Agreement.

Article 3. 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 admit such investments in accordance with its laws and rules.

2. Investments of investors of either Contracting Party shall have fair and equitable treatment, full protection and security in the territory the other Contracting Party.

Article 4. National and Most-favoured-nation Treatment

1. Each Contracting Party shall in its territory to provide investment of nvestors of the other Contracting Party treatment which is fair and equal and not less favorable than that it accords to Investments of investors of any third state.

2. Each Contracting Party shall in its territory to provide to investors of the other Contracting Party in relation to the management, maintenance, use, income generation and disposal of their investment regime, which is fair and equitable and not less favorable than that which it grants to its own investors or investors of any third state.

3. The provisions of paragraphs 1 and 2 of this article shall be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Parties to benefit from any treatment, preference or privilege which may be granted by the latter Contracting Party arising from:

a) any customs union or free trade area or a monetary union or such international agreements that affect the investment regime, or other forms of regional cooperation to which any Contracting Party is or may become;

b) any international agreement or arrangement relating to the wholly or mainly to taxation.

Article 5. Compensation for Losses

1. Where investments of investors of any Contracting Party suffer losses due to war, armed conflict, national emergency, coup, rebellion, insurrection, conspiracy, natural disaster, accidents, or other similar circumstances in the territory of the other Contracting Party, they shall be accorded by the latter Contracting Party treatment no less favourable than that which the latter Contracting Party accords to investors of any third Party.

2. Without prejudice to the conditions of paragraph 1 of this article, investors of one Contracting Party which, during any event referred to in that paragraph, suffer losses in the territory of the other Contracting Party arising from the requisition and destruction of their property by its forces or authorities which have not been caused by military action or required by the situation, shall be entitled to compensation.

Article 6. Expropriation

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subject to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "Expropriation") in the territory of the other Contracting Party, except for public purposes. Expropriation will be carried out in accordance with the legal proceedings, on a non-discriminatory basis and will be subject to conditions to pay immediately adequate and effective compensation. Such compensation will be equal to the market price of the investment when the expropriation or the threat of expropriation was common knowledge, will include interest from the expropriation at LIBOR date, will be made without delay, effectively realized and freely transferred.

2. An affected investor will have the right to have his case reviewed immediately by the judicial authority of that Contracting Party and his investment assessed in accordance with the principles set out in this Article.

3. The provisions of paragraph 1 of this Article shall also be applied when a Contracting Party expropriates the assets of the

company which received the status of a joint-stock company, or established in accordance with the legislation in force at any part of its own territory and in which investors of the other Contracting Party have shares.

Article 7. Transfers

1. The Contracting Parties shall guarantee the transfer of payments relating to the investment and income in accordance with current legislation of the Contracting Parties. Transfers will be made without any whatsoever constraints and delays. Such transfers shall include in particular, but not exclusively:

a) Capital and additional sums of money to support or increase investments;

b) Income, interest, dividends and other current income;

c) Payments made in accordance with the loan agreements related to investments;

d) Royalties or fees for services;

e) Proceeds from the sale or liquidation of the investment.

2. For the purposes of this Agreement, exchange rates are official rates, in accordance with the laws of the Contracting Parties which are valid for the current agreements at the date of transfer, unless agreed otherwise.

Article 8. Subrogation

1. If a Contracting Party or its designated agency makes payments to its own investors under the guarantee that it provided in connection with an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

a) the transfer, either by law or by legal agreement in that country, of any right or right of claim of an investor against the first Contracting Party or its appointed intermediary, as the case may be,

b) that the first Contracting Party or its designated intermediary has obtained the right, by subrogation, to enjoy the rights and make claims of that investor and will assume the obligations associated with that investment.

2. The rights or claims resulting from the subrogation will not exceed the investor's rights and claims.

Article 9. Disputes between the Contracting Party and an Investor of the other Contracting Parties

1. Any dispute which may arise between an investor of one Contracting Parties and the other Contracting Party in connection with an investment in the territory of the Contracting Party will be subject to negotiations between the parties to the dispute.

2. If any dispute between an investor of one Contracting Party and the other Contracting Party can not be thus resolved during the period of six months from the date of the written request, the investor will be entitled to refer the case:

a) to the judicial authority of the Contracting Party in the territory where an investment is carried out, or

b) the International Centre for Settlement of Investment Disputes (ICSID), bearing in mind the relevant provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which opened for signature in Washington, DC, 18 March 1965, when the two Contracting Parties have become parties to the Convention, or

c) an international arbitrator or "ad hoc" arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree in writing to change those rules. The arbitration decision shall be final and binding for both parties to the dispute.

Article 10. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be resolved through mutual consultations and negotiations.

2. If such a dispute cannot be thus settled within six months after it began, at the request of either Contracting Party, it will be transferred to an Arbitral Tribunal in accordance with the provisions of this article.

3. The arbitral tribunal shall be established for each individual case as follows: within two months of receipt of the written request for an arbitration, each Contracting Party shall appoint one member of that tribunal. These two members shall then elect a national of a third State who, after the written request for an award, shall then approval by the Contracting Parties will be appointed by the President of the Court (hereinafter referred to as "Chairman"). The Chairperson will be appointed within three months from the date of the meeting. the appointment of the other two members.

4. If during any of the periods specified in paragraph 3 of this Article, the necessary appointments have not been made, either Contracting Party may, unless otherwise agreed, invite the President of the International Court of Justice to make the necessary appointments. If it turns out that he is a citizen of any Contracting Party or if other reasons prevent him to perform the said function, the Vice-President will be invited to make the necessary appointments. If it turns out that the Vice-President is also a citizen of a Contracting Party or is unable to perform the specified function, a member of the International Court of Justice next in seniority who is not of the nationality of any of the Contracting Parties will be invited to make the necessary appointments and can perform this function with no obstacles.

5. The arbitral tribunal shall reach its decisions by majority vote. Such decisions will be binding for each Contracting Party. Each Contracting Party shall bear the expenses of its members with respect to the court and its representation in the arbitration proceedings; costs relative to the Chairman and other costs will be borne in equal parts by both Contracting Parties. The Arbitral Tribunal arbitration will determine its own procedure and may determine in its decision, that any Contracting Party will bear most of the costs.

Article 11. Application of other Rules and Special Commitments

1. If the issue is governed both by this Agreement and other international Agreement, to which both parties are Contracting Parties, nothing in this Agreement will not prevent the Contracting Parties or any of their investors, who invest in the territory of the other Contracting Party, to take advantage of those rules, which are more favorable regarding to their case.

2. If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party under its laws and regulations or under other special contractual provisions is more favourable than that accorded by this Agreement, the more favourable treatment shall be accorded.

Article 12. Changes and Additions

This Agreement may be amended and supplemented by a written agreement between the Contracting Parties. Any amendment shall enter into force if each Contracting Party has notified the other Contracting Party that it has completed all appropriate formalities preventing the entry into force of such amendment.

Article 13. Entry Into Force, Duration and Termination

1. Each Contracting Party shall notify the other Contracting Party of the completion of the procedures required under its current legislation for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last written notification.

2. This Agreement shall remain in force for a period of ten years. It shall be automatically extended for subsequent periods, unless one of the Contracting Parties at least six months before the expiration of the period notifies in writing the other Contracting Party of its intention to terminate this Agreement.

3. With respect to investments made before termination of this Agreement, the provisions of this Agreement (Article 1 - 11) will remain valid for a period of ten years from the date of termination.

Done at Almaty, September 17, 1994 in two valid copies, each in Kazakh, Ukrainian and Russian languages, all texts being equally authentic.

For the Government of Ukraine

(signature)

For the Government Republic of Kazakhstan

(signature)