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# AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN AND THE GOVERNMENT OF THE REPUBLIC OF TAJIKISTAN ON the promotion and protection of investments

The Government of the Republic of Kazakhstan and the Government of the Republic of Tajikistan, hereinafter referred to as "the Contracting Parties",

Desiring to strengthen and expand economic cooperation between the two Contracting Parties,

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

Recognizing that the promotion and reciprocal protection of investments under the Agreement will be conducive to the economic development of the Contracting Parties, Have agreed as follows:

### Article 1. Definition

For the purposes of this Agreement:

1. "Investments" means every kind of assets and the rights thereto as well as intellectual property rights invested by investors in business enterprises in order to obtain a profit (return) and includes, in particular, although not exclusively:

- Movable and immovable property and other related property rights, including mortgages, mortgage liens or other pledges, and funds in accounts in banks and other financial institutions;
- Shares in, stocks and debentures of, and any other forms of participation in enterprises, joint stock companies, business partnerships, associations and other juridical persons recognized by law and registered in accordance with the legislation of each Contracting Party;
- Loans, credits, special bank and financial deposits and other monetary claims related to investments;
- Rights to items of intellectual and industrial property, including items protected by copyright, patents, trademarks, service marks, trade names, industrial designs, trade secrets and know-how;
- Reinvestment of returns, repayment of principal and payment of interest under credit agreements.

2. "Investor" means:

(a) A natural person who is a national of one of the states of the Contracting Parties under its applicable law;

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(b) Any juridical persons constituted under the applicable State law in one of the Contracting Parties;

(c) A juridical person not constituted under the State law of one of the Contracting Parties but directly or indirectly controlled by natural or juridical persons of the State of that Contracting Party.

3. "Returns" means funds yielded by investments or related to them in monetary form or in kind, including profit, dividends, business management fees, maintenance charges and any other funds obtained by legal means.

4. "Territory" means the State territory of the States of the Contracting Parties, including free trade areas, the continental shelf and subsoil over which the States of the Contracting Parties exercise, in accordance with international law, their sovereign rights and jurisdiction.

5. A change in the form of investments which is permitted under the law and under other enactments of the State of the Contracting Party in whose territory the investments were made shall not change their character as investments.

#### Article 2. Promotion and protection of investments

1. Each Contracting Party shall facilitate investments by investors of the other Contracting Party and shall allow such investments in accordance with its State legislation.

2. Each Contracting Party shall ensure fair and equitable treatment for investments by investors of the other Contracting Party and neither shall impede the management, functioning, use or disposal of these investments through arbitrary or discriminatory measures.

#### Article 3. Legal treatment of investments

1. The Contracting Parties shall in their territories reciprocally accord to investments treatment no less favourable than that which is accorded to the investments of their own investors or to the investments of investors of third countries.

2. This treatment shall not apply to:

(a) Privileges which one of the Contracting Parties accords to investors of individual countries in connection with joint participation with them in a free trade customs or economic union;

(b) Privileges which one of the Contracting Parties accords to investors of individual countries on the basis of an agreement for the avoidance of double taxation or other agreements relating to taxation.

#### Article 4. Guarantees for investments

Investments by investors of one Contracting Party may not be requisitioned, nationalized, expropriated or subjected to other measures having such effects as requisition, na

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Tionalization and expropriation (henceforth expropriation), except in those cases when expropriation is carried out in the public interest and takes place:

-- According to the procedure established by the State law of the Contracting Party carrying out the expropriation;

-- Without discrimination;

-- With the payment without delay of adequate compensation.

The compensation shall amount to the fair market value of the expropriated investments at the time when the investor learned of the expropriation.

The compensation shall include the corresponding interest at the interest rate in effect and calculated for the period between the date of expropriation and the date of payment of the compensation.

The compensation shall be paid in the currency in which the investments were made or, with the agreement of the investor, in any other currency. The compensation shall be transferable abroad without restrictions or undue delay.

#### Article 5. Compensation for losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, civil unrest or similar situations shall be accorded treatment no less favourable than that accorded to national investors or to investors of third States in compensation for the losses suffered by them as a result of the aforementioned loss-entailing situations.

#### Article 6. Transfer of payments related to investments

1. The Contracting Parties shall guarantee that all transfers of funds related to investments are made freely and without undue delay in accordance with the procedure established by the legislation of the Contracting Party, which may provide for:

- Regulations on the registration of such transfers with a view to ensuring that the right of free transfer is not itself breached;
- Deduction of taxes and duties from the transferred amounts;
- Protection of creditors' legal rights or the enforcement of decisions rendered during the judicial proceedings.

The procedure in this article shall be fair and non-discriminatory.

Transfers under this Agreement shall include:

- Initial invested capital and any additional foreign capital used for the maintenance or development of investments;
- Profits;
- Compensation in accordance with article 4 of this Agreement;
- Payments arising from the settlement of an investment dispute;

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- Payments under credit agreements, remuneration related to intellectual and industrial property rights, and payments pursuant to management, maintenance and servicing agreements;
- Payments in compensation for losses, effected in accordance with article 5 of this Agreement;
- Remuneration for work performed on a regular basis by natural persons of the State of the other Contracting Party conducting investment-related activities;
- Proceeds of the sale or liquidation of part of or all of the investments, provided that the proceeds may be freely transferred only with the authorization of a competent body.

2. Transfers shall be made in a freely convertible currency, without undue delay, at the exchange rate which is effective on the day of the transfer, provided that the taxes and duties established under State law of the Contracting Parties are paid and that the currency law regulations of the States of the Contracting Parties are observed.

A transfer shall be deemed to be made "without undue delay" if effected within the optimal time required for the completion of transfer formalities.

#### Article 7. Most-favoured-nation provisions

If the State law of a Contracting Party or the prevailing circumstances under international law which have arisen between the Contracting Parties contain additional regulations, whether general or specific, according to investments carried out by investors of the other Contracting Party a treatment more favourable than is provided for by this Agreement, such regulations shall to the extent that they are more favourable prevail over this Agreement.

#### Article 8. Subrogation

1. If a Contracting Party or any agency designated by it makes payments to any investors under indemnities or insurance arrangements concluded in connection with investments, the other Contracting Party shall recognize the assignment to the first Contracting Party or its agency of any rights or claims belonging to the investor. A Contracting Party or any of its agencies by which the rights of the investor have been adopted shall be entitled to exercise the same rights as are exercised by the investor and to lay claim to such rights to the same extent, with reservations regarding the obligations contracted by the investor in respect of investments insured in this way.

2. In the event of subrogation, as defined in paragraph 1 of this article, investors shall not make claims unless they are authorized to do so by the Contracting Party or any of its agencies.

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#### Article 9. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation and application of the provisions of this Agreement shall be settled through diplomatic channels.

2. If an agreement cannot be reached by the Contracting Parties within six (6) months from the date on which the dispute arose, the dispute shall, upon the request of either Contracting Party, be referred to an arbitration tribunal comprising three

members. Each Contracting Party shall appoint one arbitrator and the appointed arbitrators shall select a chair, who shall be a national of a third State maintaining diplomatic relations with both Contracting Parties.

3. If one of the Contracting Parties does not appoint an arbitrator and does not agree with the invitation by the second Contracting Party to make such an appointment within two (2) months, the arbitrator shall be appointed, at the request of this Contracting Party, by the President of the International Court of Justice in The Hague.

4. If neither arbitrator can reach an agreement on the selection of a chair within two (2) months from the date of their appointments, the chair shall be appointed, at the request of either Contracting Party, by the President of the International Court of Justice.

5. If in the cases specified in paragraphs 3 and 4 of this article the President of the International Court of Justice cannot discharge the said functions or is a national of one of the Contracting Parties, the appointment shall be made by the Vice-President, and if the Vice-President too cannot discharge the said functions or is a national of one of the Contracting Parties, the appointment shall be made by the member of the International Court of Justice next in seniority who is not a national of either Contracting Party.

6. The arbitration tribunal shall establish its procedural rules without violating other arrangements between the Contracting Parties. The arbitral tribunal shall reach its decisions by a majority of votes.

7. Each Contracting Party shall bear the maintenance costs for its member of the tribunal, in accordance with its share in the arbitration proceedings. The maintenance costs for the chair of the arbitration tribunal and other costs shall be borne by the Contracting Parties in equal parts. In its decision the tribunal may, however, allocate a higher participation in the costs to one of the Contracting Parties, and this decision shall be binding on both Contracting Parties.

8. The decisions of the tribunal are final and binding on both Contracting Parties.

Article 10. Disputes between a Contracting Party and an investor from the State of the

Other Contracting Party

1. For the purpose of settling a dispute between a Contracting Party and an investor from the State of the other Contracting Party relating to investments, negotiations shall be held between the interested parties.

2. If the negotiations are not concluded with a settlement within six (6) months of the date of the written proposal to begin the negotiations, the parties to the dispute may take the following action:

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(a) If the dispute concerns the obligations under articles 4, 5 and 6 of this Agreement, it shall, at the request of the investor, be referred to an arbitration tribunal for settlement;

(b) A dispute not covered by the provisions of paragraph 2 (a) of this article shall, at the request of both parties to the dispute, be transferred to an arbitration tribunal for consideration.

3. An arbitration tribunal shall be established for each individual case. Unless otherwise agreed by the parties involved in the dispute, each of them shall appoint one arbitrator. The appointed arbitrators shall select a chair, who shall be a national of a third State.

The arbitrators shall be appointed within two (2) months of the date of receipt of the request to transfer the dispute to the arbitration tribunal; and the chair within the following two (2) months.

4. If the periods stipulated in paragraph 3 of this article have not been met, any party to the dispute may, in the absence of other arrangements, request the Chair of the Court of Arbitration of the International Chamber of Commerce in Paris to make the necessary appointments. If the Chair cannot discharge the said function or is a national of the State of a Contracting Party, provisions similar to those in paragraph 5 of article 9 of this Agreement shall be applied.

5. Unless otherwise agreed by the parties, the arbitration tribunal shall establish its procedural rules. Decisions are final and binding. Each Contracting Party shall recognize and implement the arbitral decisions.

6. Each party to a dispute shall bear the maintenance costs for its member of the tribunal in accordance with its own share in the arbitration proceedings. The maintenance costs for the chair and other costs shall be borne by the Contracting Parties in equal parts as parties to the dispute. In its decision the tribunal may, however, establish another proportion of the cost-sharing to be borne by one of the parties, and this decision shall be binding on both parties.

7. A Contracting Party which is a party to a dispute may not at any stage of the arbitral procedure or the implementation of the decision of the tribunal invoke the fact that the investor received compensation under an insurance agreement covering the whole or part of the incurred loss.

8. In the event that both Contracting Parties become parties to the Washington Convention on the Settlement of Investment Disputes between States and Nationals of other States dated 18 March 1965, disputes shall be submitted to the International Centre for the Settlement of Investment Disputes as follows:

-- Disputes covered by the provisions of paragraph 2 (a) of this article at the request of the investor; and

-- Disputes covered by the provisions of paragraph 2 (b) of this article with the mutual consent of the Contracting Parties.

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#### Article 11. Final provisions

1. This Agreement shall be subject to ratification and shall enter into force after an exchange of letters by the Contracting Parties concerning the ratification of this Agreement. The date of entry into force of this Agreement is the date of receipt of the final letter.

2. This Agreement shall remain in force for a period of ten (10) years after its entry into force and shall remain in force until such time as its force is terminated in accordance with paragraph 6 of this article.

3. The provisions of this Agreement, from the time of its entry into force, shall also apply to investments made since 16 December 1991.

4. In respect of those investments made prior to the termination of force of this Agreement, the provisions of all the preceding articles of this Agreement shall remain in force for a period of ten (10) years from the date on which its force is terminated.

5. Modifications may be made to this Agreement by written agreement between the Contracting Parties. Any modification shall enter into force once each Contracting Party has notified the other Contracting Party that it has complied with all of its formalities preventing the entry into force of such a modification.

6. Each Contracting Party may provide the other Contracting Party, one (1) year before the period of validity expires, written notification of the termination of force of this Agreement upon the expiration of the first nine (9) years or at any time thereafter.

In witness whereof, the undersigned, duly authorized thereto, have signed this Agreement.

Done in duplicate in Dushanbe on this the sixteenth day of December 1999 in the Kazakh, Tajik and Russian languages, all texts being equally authentic.

In the event of any divergences arising in the interpretation of the provisions of this Agreement, the Contracting Parties shall be guided by the Russian text.

For the Government of the Republic of Kazakhstan:

K. T okaev

For the Government of the Republic of Tajikistan:

I. N. A zimov