

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF FINLAND AND THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN CONCERNING THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

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

Seeking to develop and broaden trade and economic relations between Finland and the Republic of Kazakhstan,

Motivated by the principles of equality and mutual advantage,

Desirous of promoting, protecting and creating favourable conditions for investments made by investors of either Contracting Party in the territory of the other Contracting Party,

Aware that the promotion and reciprocal protection of investments enhance business activity and hence the development of economic relations between the two Contracting Parties,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(a) The term "investment" means every kind of fund and asset related to economic activity, including in particular, but not exclusively:

(1) Movable and immovable property and other property rights, such as mortgages;

(2) Holdings, stocks and other kinds of shares in the assets of juridical persons;

(3) Claims to money, debt claims;

(4) Industrial, commercial and intellectual property rights, including rights connected with copyright, patents, trade marks, service marks, company names and commercial models, commercial secrets, technical processes, know-how and goodwill;

(5) Rights to commercial activity and concessions, including rights relating to the search for, or the development, extraction or exploitation of natural resources, as well as all other rights granted by law or by agreement;

(6) Leased investor's commodities relating to investments covered by this Agreement and used by the lessee in accordance with the law.

1 Came into force on 14 February 1998 by notification, in accordance with article 12.

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(b) The term "investor" means:

(1) A natural person who is a national of Finland or Kazakhstan in accordance with the law of those countries, or a juridical

person which is constituted in accordance with the law of Finland or Kazakhstan, deemed competent under the law of their country to make investments in the territory of the other Contracting Party;

(2) A juridical person located in the territory of one of the Contracting Parties or in a third State, in which an investor of either Contracting Party has a majority interest.

(3) A juridical or natural person not covered by paragraphs 1 and 2, provided that the Contracting Parties jointly approve each individual investment planned by that person.

(c) The term "returns" means the amounts of money or any other asset yielded by activities relating to investments, including in particular, but not exclusively, profits, interest, dividends, royalties and other fees agreed in article 6 of this Agreement.

(d) The term "territory" means the national territory of either Contracting Party as well as the economic zone, fishing zone and continental shelf extending beyond the territorial waters of either Contracting Party, over which the Contracting Parties, in accordance with international law, exercise sovereign rights and jurisdiction for purposes of the search for, extraction and preservation of natural resources.

Article 2. Application of the Agreement

(1) This Agreement shall apply to investments made in accordance with the law of the Contracting Party in whose territory the investment is made.

(2) Under the terms of paragraph 1 of this article, this Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, before and after the entry into force of this Agreement.

Article 3. Most Favoured Treatment

(1) Neither Contracting Party shall in its territory subject investments made in accordance with the provisions of this Agreement by investors of the other Contracting Party, or any returns on such investments, to treatment less favourable than that which it accords in similar cases to investments or returns of investors of third countries.

(2) In respect of investors of either Contracting Party whose investments have suffered damages as a result of war or other armed conflict, declaration of state of emergency or public unrest, the other Contracting Party shall accord treatment no less favourable than that accorded by the other Contracting Party to investors of any third country with regard to the restitution of property, replacement of property, compensation or other kinds of settlement connected with material assets.

The payments envisaged in the above paragraph shall be made in freely convertible currency, and shall be freely transferred from one country to the other.

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(3) The treatment provided for in paragraphs 1 and 2 of this article shall not apply to any preferences, privileges or grounds for compensation granted by either Contracting Party to investors, investments and returns of third countries arising from:

— An existing or future agreement concerning an economic area, customs union or free trade zone;

— An agreement on the elimination of double taxation;

— Any other international agreement wholly or partly related to taxation.

Article 4. Protection of Investments

Each Contracting Party shall in all situations and within the limits established in its legislation and provisions, as well as in accordance with international law, accord reasonable and fair treatment to investments made by investors of the other Contracting Party, as well as in respect of returns on such investments.

Article 5. Expropriation

(1) Investments of investors of either Contracting Party made in the territory of the other Contracting Party may not be nationalized, expropriated or subjected to measures having similar consequences to those of nationalization or expropriation (hereinafter referred to as "expropriation"), except when such measures are taken in the public interest. In such cases, the procedure established by the law in force in that territory shall be applied, and appropriate compensation paid.

Such measures shall not be discriminatory in nature.

The compensation shall be calculated on the basis of the actual market value of the expropriated investments immediately before the expropriation was effected or the decision to take such measures was made public, whichever occurs first, and shall be determined in accordance with the principles of valuation adopted in international practice. The compensation shall be paid in freely convertible currency at the official exchange rate applicable on the date when the value was assessed. The amount of compensation shall be transferred without undue delay and within the time normally required for completion of formalities relating to transfers, but no later than three months from the date of the expropriation. The compensation shall include interest calculated from the date on which the actual value of the investment was determined until the date of payment, at the London Interbank Offered Rate (LIBOR). In the absence of such a rate, the normal commercial interest rate applied by the central bank of the Contracting Party which adopted the compulsory measures shall apply.

The investor whose investments were affected shall be entitled, under the law of the Contracting Party effecting the expropriation, to a prompt assessment of his case by a court or other independent body of that Contracting Party and to have the value of his investment determined in accordance with the principles stated in this paragraph.

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(2) If either Contracting Party expropriates property of a company or enterprise established in any part of its territory on the basis of the law in force and of shares held by investors of the other Contracting Party, the provisions of paragraph 1 of this article shall apply.

Article 6.

Transfer of payments and income and return of movable

PROPERTY RELATING TO INVESTMENTS

Each Contracting Party shall guarantee to investors of the other Contracting Party the return of movable property relating to investments without undue delay, and in any case within three months, and without restriction and the transfer in freely convertible currency of payments relating to investments and in particular of:

(1) Profits, dividends, interest, royalties, licensing fees, commissions, fees for technical assistance and services and other income derived from investments made by an investor of the other Contracting Party;

(2) Loans or sums of money paid to liquidate corresponding debts;

(3) Amounts due to an investor as a result of the sale or partial or full liquidation of investments;

(4) Salaries and other earnings accruing to nationals of the country of the investor for work in the territory of the receiving country relating to investments.

Article 7. Facilitation of Investments

The Contracting Parties shall, within the limits of their respective legislation, ensure favourable conditions for investment activity.

Article 8. Disputes between a Contracting Party and an Investor

(1) Legal disputes between an investor of one Contracting Party and the other Contracting Party concerning an investment

of the former in the territory of the latter, in respect of which the disputing parties have not reached a settlement within three months from the date of submission of a written request by one of the parties to the other party, may, at the request of one of the parties to the dispute, be referred to either:

(a) The International Centre for Settlement of Investment Disputes (hereinafter referred to as "the Centre"), taking into account the relevant provisions of the Convention for the Settlement of Disputes in respect of Investments occurring between States and Nationals of Other States signed in Washington on 18 March 1965¹ (ICSID Convention), if both Contracting Parties are parties to that Agreement; or

(b) The International ad hoc arbitral tribunal established in accordance with the Arbitration Rules of the United Nations Commission on International Trade

¹ United Nations, Treaty Series, vol. 575, p. 199.

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Law (UNCITRAL) 1 in force. The parties to the dispute may conclude written agreements concerning changes to the provisions of the Arbitration Rules.

(2) Notwithstanding the provisions of paragraph 1 of this article concerning referral of a dispute to an arbitral tribunal, the investor has the right to choose the procedure for settlement of the dispute prior to referral of the dispute to an arbitral tribunal.

(3) The Contracting Parties shall recognize the decision of the arbitral tribunal and enforce it in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted in New York in 1958.

Article 9. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, whenever possible, be settled through the diplomatic channel.

(2) If the dispute cannot be settled between the Contracting Parties through the diplomatic channel, it shall, at the request of either Contracting Party, be referred to an arbitral tribunal.

(3) The arbitral tribunal shall be constituted separately for each case in the following manner. Within two months after receiving the request for arbitration, each Contracting Party shall appoint one arbitrator. The two arbitrators shall then select a national of a third State who, upon approval by the two Contracting Parties, shall be appointed chairman of the arbitral tribunal. The chairman shall be appointed within two months from the date of appointment of the other two members of the arbitral tribunal.

(4) If within the periods specified in paragraph 3 of this article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party, or is for any reason unable to act, the Vice-President of the International Court shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party, or is also unable to act, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party and who is unable to act shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall reach its decision by a majority vote. The decision of the arbitral tribunal shall be binding on both Contracting Parties. The Contracting Parties shall bear the costs related to the chairman equally. Each Contracting Party shall bear the costs related to the arbitrator appointed by it. The arbitral tribunal may, however, in its decision rule that a larger share of the costs shall be borne by one of the Contracting Parties and that ruling shall be binding on both Contracting Parties. The tribunal shall decide on its own rules of procedure.

¹ United Nations, Official Records of the General Assembly, Thirty first Session, Supplement No. 17 (A/31/17), p. 34.

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Article 10. Subrogation

If one Contracting Party or its appointed representative under a guarantee given by them in respect of an investment of an investor of that Contracting Party, makes a payment of compensation to the investor, that Contracting Party, or its appointed representative, shall be entitled, by virtue of subrogation, to exercise the rights of the investor as specified in this Agreement.

Article 11. Application of National Legislation

AND INTERNATIONAL AGREEMENTS

If either Contracting Party, under its legislation or an international agreement to which both Contracting Parties are parties, accords treatment to investments of investors of the other Contracting Party which is more favourable than the treatment envisaged under this Agreement, the more favourable treatment shall be applied.

Article 12. Entry Into Force, Duration and Termination of the Agreement

(1) This Agreement shall enter into force thirty (30) days from the date on which the Contracting Parties notify each other through the diplomatic channel of the completion of the constitutional procedures required for the entry into force of this Agreement.

(2) This Agreement shall remain in force for a period of fifteen (15) years, and shall continue in force after the expiry of that period, provided that it is not terminated as specified in paragraph 3 of this article.

(3) Either Contracting Party may, after giving at least one (1) year's written notice to the other Contracting Party through the diplomatic channel, terminate this Agreement by denunciation before the expiry of the initial fifteen-year term of this Agreement, or at any time thereafter.

(4) With respect to investments made before this Agreement ceases to have effect, the provisions of articles 1 to 11 shall remain in force for a period of fifteen (15) years after the Agreement ceases to have effect.

Done at Alma-Ata on 29 September 1992 in two original copies, each in the Finnish, Kazakh and Russian languages, all texts being equally authentic.

' For the Government

Of the Republic of Finland:

P. Vayrynen

For the Government of the Republic of Kazakhstan:

S. Tereshtshenko

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