

Volume 2412,1-43524

[T ranslation - T raduction]

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA AND THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN ON THE promotion AND reciprocal protection OF investments

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

Desiring to develop economic cooperation on mutually beneficial terms, Endeavouring to create conditions favourable to investments made by the investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and reciprocal protection of those investments will serve to encourage the initiative of private enterprise and will contribute to the wellbeing of both Contracting Parties,

Have agreed as follows:

Article 1. Definitions

For purposes of this Agreement:

1. The term "investments" means property of any kind invested by an investor of one Contracting Party in the territory of the other Contracting Party in the manner prescribed by and in accordance with the laws of the Contracting Party in whose territory the investments are made. This concept means in particular, though not exclusively:

- (a) movable and immovable property, and other property rights such as mortgages, pledges and liens and other such rights;
- (b) shares, bonds and other forms of participation in enterprises;
- (c) rights to claims to money that have been used to create economic value, or rights to claims to any activity with economic value;
- (d) copyrights, industrial property rights (such as patents, designs and models, trademarks and trade names), know-how and good will;
- (e) any right to engage in an economic activity granted by a state authority, including concessions to explore for, extract or exploit natural resources.

Any modification made to a form of investment in accordance with the law or other regulatory enactments of the Contracting Party in whose territory the investment was made shall not alter its nature as an investment.

2. The term "investor" means:

- (a) a natural person who is a national of one of the Contracting Parties in accordance with its prevailing law;

Volume 2412,1-43524

- (b) any economic entity founded in the territory of one of the Contracting Parties in accordance with its laws and procedures;

(c) any economic entity or organization founded under the law of any third State and directly or indirectly controlled by nationals or economic entities of a Contracting Party that are situated in the territory of that Contracting Party, with majority ownership necessary for control.

3. The term "income" means all returns on investments and includes, in particular, though not exclusively, profits, capital gains, interest, dividends and royalties.

4. The term "territory" means:

(a) with regard to the Republic of Lithuania: the territory of the Republic of Lithuania, including the territorial waters and any marine or underwater space in which the Republic of Lithuania, under international law, may exercise rights to explore, exploit and protect the seafloor, subsoil and natural resources;

(b) with regard to the Republic of Kazakhstan: the State territory of the Republic of Kazakhstan, including free economic zones, the continental shelf and the subsoil over which the Republic of Kazakhstan exercises its sovereign rights and jurisdiction under international law.

Article 2.

"Promotion of investments and permission to invest

Each Contracting Party shall encourage investors of the other Contracting Party to invest in the territory of the first Contracting Party and shall accept such investments in accordance with its laws and procedures.

Article 3.

"Protection of investments and their legal status

1. Each Contracting Party shall provide in its territory fair and equal treatment of the investments of investors from the other Contracting Party, as well as provide for their full safety and protection.

Neither Contracting Party may, unilaterally or through discriminatory measures, hinder investors of the other Contracting Party in the possession, maintenance, use or disposal of investments.

2. Each Contracting Party shall, in accordance with its laws and international treaties, ensure that the investments made in its territory by investors from the other Contracting Party are accorded treatment that is no less favourable than that accorded to the investments of its own investors or to investments of investors from any third State.

3. The provisions of this Article shall not oblige either Contracting Party to grant to the investors of the other Contracting Party favours, concessions or privileges that it grants to investors of any third State in the context of:

(a) current or future participation in a customs union, a common market, a free trade zone, an economic union or any other form of regional economic cooperation;

(b) concessions granted under already existing or future treaties on double taxation or other tax-related agreements or national tax legislation.

Volume 2412,1-43524

Article 4. Expropriation and Compensation

1. Neither Contracting Party in its territory shall expropriate or nationalize, or undertake similar measures against, the investments of investors from the other Contracting Party (hereinafter referred to as expropriation), unless:

(a) such expropriation is done in the public interest and under due process of law;

(b) such expropriation is non-discriminatory;

(c) immediate, appropriate and effective compensation is provided.

2. The compensation referred to in subparagraph (c) of paragraph 1 of this Article shall correspond to the market value of the expropriated investments at the time immediately preceding the expropriation or when the expropriation being effected becomes public, whichever comes first, and shall be paid without delay. The compensation shall include interest computed from the first day after the date of the expropriation at the LIBOR rate. The compensation shall be effectively

made and shall be freely transferable.

3. Investors whose property is expropriated shall have the right to an immediate review performed by the appropriate legal or administrative authorities of the other Contracting Party so as to ascertain whether the expropriation and subsequent compensation conform to the principles of this Article and to the law of the expropriating Contracting Party.

4. Investors of one Contracting Party whose investments suffer losses in the territory of the other Contracting Party as a result of war, a declared state of emergency, a rebellion, an uprising, or other such circumstances shall be granted treatment that is no less favourable than that given to the other Contracting Party's investors or to investors of any third State. Any ensuing compensation shall be paid without undue delay and shall be freely convertible.

5. The investors referred to in subparagraph (c) of paragraph 2 of Article 1 may not file claims based on the paragraphs of this Article if compensation has already been paid under similar provisions of another agreement on the protection of investments concluded with the Contracting Party in whose territory the investments were made.

Article 5. Transfers

1. Each Contracting Party shall guarantee investors from the other Contracting Party the transfer, without undue delay, of investment-related funds in freely convertible currency after the fulfilment of all obligations prescribed under the law of the Contracting Party that is accepting the investment, in particular:

- (a) capital and additional funds for maintaining or expanding investments;
- (b) income, profits, interest, dividends and other current receipts;
- (c) proceeds from the total or partial liquidation of investments;
- (d) funds disbursed for the repayment of loans received and documented and directly related to investments;
- (e) compensation paid under the provisions of Article 4 of this Agreement;

Volume 2412, I-43524

(f) wages of the nationals of one Contracting Party who have been allowed to work in the territory of the other Contracting Party in connection with investments made in that territory.

2. Transfers in freely convertible currency shall be made without delay in the manner prescribed by the Contracting Party in whose territory the investments are made. At the request of the investor, one convertible currency may be exchanged for another convertible currency at the foreign exchange rate of the bank servicing the investor.

3. The Contracting Parties shall be obliged to treat the transfers referred to in paragraphs 1 and 2 of this Article no less favourably than they treat the investment-related transfers of their own investors or of investors of any third State.

Article 6. Subrogation

1. If one Contracting Party or an Organization it authorizes (first Contracting Party) makes a payment related to a guarantee or insurance that it has provided in connection with investments in the territory of the other Contracting Party (second Contracting Party), the second Contracting Party shall recognize:

- (a) the transfer to the first Contracting Party, under the law or a legal contract, of all rights and rights to claims of the party that received the compensation; and
- (b) that the first Contracting Party shall be vested with the rights and rights to claims received via subrogation to the same extent that the party that received the compensation is vested with such rights.

2. The first Contracting Party shall be granted:

- (a) with respect to rights and rights to claims received by means of the act of transfer of rights and rights to claims, and
- (b) with respect to payments received in connection with such rights and rights to claims,

The same treatment as is granted under this Agreement to the party that received the compensation for investments made and income related to them.

3. Any payments the first Contracting Party receives in nonconvertible currency in connection with the acquired rights and

rights to claims must be freely accessible to the first Contracting Party so that it can use them for any expenses in the territory of the second Contracting Party.

Article 7.

"Disputes that arise between one Contracting Party and an investor from the other Contracting Party

1. Notification of an investment-related dispute that has arisen between an investor from one Contracting Party and the other Contracting Party shall be made in writing. In the notification, the investor must provide detailed information for the Contracting Party in whose territory the investment is made. If possible, the parties shall attempt to resolve the differences with an amicable agreement.

Volume 2412, I-43524

2. If, within six months after the written notification referred to in the first paragraph of this Article, no settlement of the dispute has been reached, the dispute, at the request of either of the parties, may be submitted, by the investor's choice, to either:

- An ad hoc arbitral tribunal set up according to the United Nations Commission on International Trade Law (UNCITRAL) arbitration rules adopted in 1976 at the United Nations General Assembly, or

- The International Centre for the Settlement of Investment Disputes (ICSID) acting in accordance with the Convention for the Settlement of Investment Disputes between States and Nationals of Other States, which was signed in 1965 in Washington, according to arbitral tribunal rules, if both Contracting Parties have acceded to the Convention.

3. The Contracting Party that is a party to the dispute may not, at any stage of the arbitration proceedings or execution of the arbitral award, cite the fact that the investor has received compensation that totally or partially covers his losses pursuant to an insurance policy.

4. The arbitral awards shall be final and binding on both parties to the dispute. Each Contracting Party shall undertake to execute the award in accordance with its laws and the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, if both Contracting Parties are party to the Convention. The arbitral tribunal shall convene in a third State that is party to the New York Convention.

Article 8. Disputes between Contracting Parties

1. Any dispute between the Contracting Parties relating to the interpretation or application of this Agreement shall be settled, to the extent possible, through diplomatic channels.

2. If the Contracting Parties cannot reach agreement within six months after the dispute between them arises, the dispute, at the request of either of the Contracting Parties, may be submitted to an arbitral tribunal.

3. The arbitral tribunal shall be constituted for each specific case as follows: Within two months from the date on which one of the Contracting Parties receives the petition of the other Contracting Party to submit the dispute to arbitral proceedings, each Contracting Party shall appoint one arbitrator. Those two arbitrators shall, within two months, select a third arbitrator, who shall be a national of a third State. The third arbitrator shall, by mutual consent of the Contracting Parties, be the President of the arbitral tribunal.

4. If the arbitral tribunal is not constituted within the period specified in paragraph 3 of this Article and if the Contracting Parties are unable to agree otherwise, either of the Contracting Parties may invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of one of the Contracting Parties or if he is unable to perform the above-mentioned function for other reasons, the right to make the necessary appointments shall be granted to the Vice-President of the International Court of Justice. If the Vice-President is a national of one of the Contracting Parties or if he is unable to perform the above-mentioned function, the invitation to make the necessary appointments shall go to the most senior

Volume 2412, I-43524

Member of the International Court of Justice who is not a national of either of the Contracting Parties.

5. The arbitral tribunal, guided by the provisions of this Agreement and the standards of international law, shall determine its own rules of procedure. The arbitral tribunal shall take its decisions by a majority of votes. The decisions of the arbitral tribunal shall be final and binding on both Contracting Parties.

6. Each of the Contracting Parties shall defray the expenses of the arbitrator appointed by it and the expenses of its representation in the arbitral proceedings; the expenses of the president of the arbitral tribunal and other expenses shall be shared equally by the Contracting Parties. The arbitral tribunal, however, may, by its own decision, specify a larger share of the expenses for one of the Contracting Parties, and that decision shall be binding on both Contracting Parties.

Article 9. More Favourable Terms

If the national legislation of one of the Contracting Parties or existing or later-assumed obligations under international law grant the investments of investors of the other Contracting Party terms that are more favourable than those of the provisions of this Agreement, the more favourable terms shall apply.

Article 10. Consultations and Exchange of Information

At the request of either Contracting Party, the other Contracting Party must, without delay, agree to conduct negotiations regarding the interpretation or application of the provisions of this Agreement. At the request of either Contracting Party, information pertaining to the laws, regulatory enactments, decisions and administrative practices or procedures or the policy that the other Contracting Party may apply to the investments specified in this Agreement must be exchanged.

Article 11. Application of the Agreement

The provisions of this Agreement shall also apply to investments made since 16 December 1991 by the investors of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's laws upon the Agreement's entry into force.

Article 12. Amendments

Upon the entry into force of this Agreement or at any subsequent time, the provisions of this Agreement may be amended by mutual consent of the Contracting Parties. The amendments shall enter into force after the Contracting Parties have notified each other of the completion of all the constitutional procedures necessary for the amendments to enter into force.

Volume 2412, I-43524

Article 13.

"Entry of the Agreement into force, duration and termination

1. The Contracting Parties shall notify each other of the completion of all the constitutional requirements stipulated by the national legislation of each Contracting Party for the entry into force of this Agreement.

The date of the entry into force of this Agreement shall be the date of receipt of the later notification.

2. This Agreement shall be concluded for 10 years. Upon the expiration of that 10-year period, this Agreement shall be automatically extended each time for subsequent five-year periods, unless one of the Contracting Parties, 12 months before the expiration of this Agreement, gives the other Contracting Party written notification of its desire to terminate this Agreement.

3. With regard to investments made prior to the termination of this Agreement, the provisions of Articles 1-12 of this Agreement shall remain in force for 10 years, reckoned from the date of termination of this Agreement.

DONE at Almaty on 15 September 1994, in two copies in the Lithuanian, Kazakh and Russian languages, all texts being equally authentic. In the event that differences arise in the interpretation of the provisions of this Agreement, the Contracting Parties shall apply the Russian text.

For the Government of the Republic of Lithuania:

For the Government of the Republic of Kazakhstan: