

# AGREEMENT

Between

## GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN AND THE GOVERNMENT OF THE KYRGYZ REPUBLIC on the promotion and mutual protection of investments

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

Conscious that the promotion and mutual protection of investments will promote the development of mutually beneficial trade and economic and scientific and technical cooperation between the two Contracting Parties, and will also increase the welfare of both states,

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

Based on the principles of equality, mutual respect, sovereignty and mutual benefit,

Have agreed as follows:

### Article 1. Definitions

For the purposes of this Agreement

1. The term "Investments" means any asset and investment by an investor of one Contracting Party in the territory of the other Contracting Party, in particular, but not exclusively:

- A) movable and immovable property and any other related property rights, including mortgages, the right to withhold a mortgage or other collateral, and cash on accounts with banks and other financial institutions;
- B) shares, deposits (bonds), bonds, and any other forms of participation in enterprises, business partnerships and companies, associations and other legal entities recognized by law registered in accordance with the legislation of each of the Contracting Parties;
- C) loans, loans, targeted bank and financial deposits and other monetary requirements related to the implementation of investments;
- D) rights to objects of intellectual and industrial property, including objects protected by copyright, patents, trademarks, service marks, trade names, industrial designs and know-how;
- E) reinvestment of income and payments of principal and interest on loan agreements;
- F) The right to economic activity, including the right to a concession, which is expressed in the exploration, development, extraction or exploitation of natural resources obtained by law or contract.

2. The term "investor" means:

- A) an individual who is a citizen of one of the Contracting Parties and is investing in the territory of the other Contracting Party in accordance with its current legislation;
- B) a legal entity, other associations with the right of a legal entity or without it, established in accordance with the legislation

of any of the Contracting Parties, having its seat on its territory and investing in the territory of the other Contracting Party.

3. The term "income" means:

Funds received as a result of investments or associated with them, in cash or in kind, including profits, dividends, remuneration for the management of the enterprise, maintenance and any other funds obtained legally.

4. The term "territory" means:

In respect of the Contracting Parties: State territory

Contracting Parties, including free economic zones, the continental shelf and subsoil, over which the Contracting Parties exercise their sovereign rights and jurisdiction in accordance with international law.

5. The change in the form of the investment permitted under the laws of the Contracting Party in whose territory the investment was made does not change its nature as an investment.

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

1. Each of the Contracting Parties shall facilitate investments of investors of the other Contracting Party and shall permit such investments in accordance with its legislation.

2. Each of the Contracting Parties shall ensure a fair and equitable treatment for investments by investors of the other Contracting Party and shall not be prejudiced by arbitrary or discriminatory management measures, the operation, use or disposition of these investments.

## **Article 3. Legal Regime of Investments**

1. Each of the Contracting Parties shall ensure in its territory with respect to investments a regime no less favorable than that granted to investments of its own investors or investments of investors of third countries.

2. This mode does not apply to:

A) the advantages that one of the Contracting Parties grants to investors of individual countries in connection with their joint participation in the customs or economic union of free trade;

B) the advantages that one of their Contracting Parties grants to investors of individual countries on the basis of an agreement on avoidance of double taxation or other agreements on tax issues.

## **Article 4. Guarantees Against Expropriation**

1. Investments of investors of one of the Contracting Parties may not be requisitioned, nationalized, expropriated or subjected to other measures having consequences such as requisition, nationalization, expropriation (hereinafter expropriation), except when the expropriation is carried out in the public interest and is carried out:

- In accordance with the procedure established by law;
- Without discrimination;
- With payment without delay of adequate compensation.

2. This compensation equals the market value of investments on the day preceding the day of the adoption or promulgation of the decision on expropriation. Compensation should include interest corresponding to the current interest rate of investments and calculated for the period between the date of expropriation and the date of actual payment of compensation. Compensation is paid in the currency in which the investment was made, or, with the consent of the investor, in any other currency. Compensation is subject to transfer abroad without restrictions and unnecessary delay.

## **Article 5. Compensation for Losses**

1. Investors of one of the Contracting Parties whose investments in the territory of the other Contracting Party have suffered damage as a result of war or other armed conflict, state of emergency, civil strife or similar circumstances shall be granted a treatment no less favorable than that applied to their investors, or investors of third countries, with compensation for the damage suffered by them as a result of the above circumstances. The payments made at the same time will be freely

convertible and transferable.

2. Without prejudice to paragraph (1) of this article, investors of one of the Contracting Parties who in any of the situations specified in this paragraph will be harmed in the territory of the other Contracting Party as a result of:

A) the seizure of their property by law enforcement agencies and military forces or authorities, or

b) the destruction of their property by law enforcement agencies or military forces or authorities, which was not caused by military actions or

Was caused by the need for the situation, compensation should be provided for damages or adequate compensation. The payments made at the same time will be freely convertible and transferable.

## **Article 6. Transfer of Payments Related to Investments**

1. The Contracting Parties guarantee that all funds transfers related to investments are made freely and without undue delay in the convertible currency in which capital was initially placed or any other currency agreed with the investor and the Contracting Party concerned in accordance with the procedure established by the legislation of the Contracting Parties, which may be provided for:

- The rules for processing such transfers, taking into account that the right to free transfer is not violated;
- Taxes, fees and withholdings from transferable amounts;
- Protection of the legal rights of creditors or enforcement of judgments made in the course of proceedings.

In this Agreement, transfers include:

- Initially and in addition invested capital;
- Profit;
- Compensation in accordance with Articles 4 and 5 of this Agreement;
- Payments, in accordance with the loan agreement, as well as remuneration in connection with the rights to intellectual and industrial property;
- Payment for labor on a regular basis for individuals of the other Contracting Party carrying out activities related to investments;
- Proceeds from the sale or liquidation of part or all of the investment.

2. The procedure specified in this article shall be fair and non-discriminatory. In the absence of any other arrangement with the investor, transfers will be made at the exchange rate established at the date of transfer in accordance with the current exchange rules.

The translation "without undue delay" will be a translation made during the time normally required to perform formal actions related to the transfer.

## **Article 7. Subrogation**

1. If a Contracting Party or an institution authorized by it makes payments to any of its State's investors under a guarantee or insurance concluded in connection with an investment, the other Contracting Party will recognize the assignment to the first Contracting Party or its institution of any rights or requirements inherent in the investor. The Contracting Party or any of its institutions that have adopted the rights of the investor have the right to the same rights as

Has the investor and the claims of such rights to the same extent, with a reservation in respect of the investor's obligations related to the investment so insured.

2. In the event of a subrogation specified in paragraph 1 of this article, the investor will not make claims unless it is authorized by the Contracting Party or its any institution.

## **Article 8. Article Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation and application of the provisions of this agreement will be resolved through diplomatic channels.
2. If no agreement is reached by the Contracting Parties within six months from the date of the dispute, the dispute shall, at the request of any of the Contracting Parties, be referred to an arbitral tribunal composed of three members. Each of the Contracting Parties shall appoint one arbitrator and the appointed arbitrators shall elect a Chairman who will be a citizen of a third State maintaining diplomatic relations with both Contracting Parties.
3. If one of the Contracting Parties does not appoint an arbitrator and agrees with the invitation of the second Contracting Party to bring such an appointment within two months, the arbitrator shall be appointed at the request of that Contracting Party by the President of the International Court of Justice in Hague.
4. If both of the arbitrators can not reach agreement on the election of the chairman within two months from the date of their appointment, he shall be appointed at the request of any of the Contracting Parties 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 can not perform this function or if he is a citizen of one of the Contracting Parties, such appointment will be made by the Vice-President, and if he can not fulfill Or is a national of one of the Contracting Parties, the appointment shall be made by the highest-ranking judge of the International Court of Justice who is not a national of either Contracting Party.
6. Without infringing other decisions between the Contracting Parties, the arbitral tribunal shall establish its own rules of procedure. The arbitral tribunal shall rule by a majority of votes.
7. Each of the Contracting Parties shall bear the cost of maintaining its member of the court, in accordance with its own share in the arbitration procedure; costs for the maintenance of the chairman and other costs are covered by the Contracting Parties in equal parts. However, the court may in its decision determine the greater participation of one of the Contracting Parties and this decision will be binding on both Contracting Parties.
8. The decisions of the court are final and binding on each of the Contracting Parties.

## **Article 9. Settlement of Investment Disputes**

1. With a view to resolving the dispute between the Contracting Party and the investor of the second Contracting Party in relation to the investment, without prejudice to the provisions of Article 8 of this Agreement, negotiations will be held between the parties concerned.
2. If the negotiations are not concluded by a decision within six months from the date of the written proposal to begin negotiations, the parties to the dispute may come to an agreement to refer the dispute to any of the following organizations:
  - A) to the International Center for the Settlement of Investment Disputes (with respect to the provisions of the Convention on the Settlement of Disputes on Investments Between States and Nationals of Other States, which was opened for signature in Washington, DC, on March 19, 1965 and in Additional Services for Conciliation Arbitration and Establishing the facts of the Administration that will be applicable); or
  - B) to the Arbitration Court of the International Chamber of Commerce; or
  - C) to the international arbitrator or to the arbitration tribunal ad los, which must be appointed by special agreement or be established in accordance with the Arbitration Rules of the UN Commission on International Commercial Law.
3. If, after a period of three months from the date of the request, no agreement is reached in writing on the use of one of the above alternative procedures, then at the request expressed in writing, interested investors should be referred to arbitration in accordance with the current Arbitration Rules of the UN Commission On international trade law.

## **Article 10. Application of other Rules**

If the provisions of the law of either Contracting Party or the obligation under international law currently existing or subsequently established between the Contracting Parties in addition to this agreement contain rules that give the right to investments of investors of the other Contracting Party to a regime more favorable than envisaged

This Agreement, then such rules should prevail over this Agreement to the extent that they are more favorable.

## **Article 11. Entry Into Force**

This Agreement is subject to ratification and will enter into force from the date of the exchange of instruments of ratification.

## **Article 12. Duration and Termination**

1. This Agreement shall remain in force for a period of ten years. Thereafter, it shall remain in force until the expiration of twelve months from the date on which one Contracting Party has sent a written notification of its termination to the other Contracting Party. Provided that in respect of an investment carried out during the term of this Agreement, its provisions

Will continue to operate for ten years from the date of termination of the announcement and without prejudice to the subsequent application of the rules of international law.

2. This Agreement may be amended by a written agreement between the Contracting Parties. Any amendment shall enter into force if each of the Contracting Parties notifies the other Party that it has regulated all its own formalities preventing the entry into force of such an amendment

IN WITNESS WHEREOF, we, the undersigned, duly authorized representatives, have signed this Agreement

Done in 1997 , in two

Authentic copies, each in Kazakh, Kyrgyz, and Russian, all texts being equally authentic.

In the event of a discrepancy in the interpretation of the provisions of this

The Contracting Parties will be guided by the text of the Agreement in Russian.

FOR THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN

FOR THE GOVERNMENT OF THE KYRGYZ REPUBLIC