Agreement between the Government of the Kyrgyz Republic and the Government of Mongolia on Encouragement and Mutual Protection of Investments

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

Desiring to develop economic cooperation for mutual benefit both states,

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

Recognizing the need to promote and protect foreign investments to accelerate the economic prosperity of both countries,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investor" means in relation to each Contracting Party:

a) natural persons who, in accordance with the law of the Contracting Parties are considered to be its nationals;

b) legal entities, including companies, corporations, partnerships, associations and other organizations established in accordance with the law of the Contracting Parties and indeed carrying out economic activities in the territory of the same Contracting Party;

c) legal persons not established in accordance with the law of the Contracting Parties, but that do carry out economic activity, controlled by physical or legal persons, as defined respectively in subparagraphs "a)" and "b)" in this section.

(2) The term "investment" includes any kind of assets, specifically:

a) movable and immovable property and other related property rights, such as mortgage, pledge, lien property and others;

b) stocks, mutual participation or any other kind of participation in a legal entity;

c) the rights (claims) to the amount of money, goods, services and any other requirements for the execution of contracts or for any operation, bonds and other debt obligations with financial value;

d) the right to intellectual property, including business reputation (goodwill), copyrights, patents, trademarks, industrial designs, manufacturing processes, "know-how" and branded name;

e) any right conferred by law, by contract or any license or permit legally issued to exercise an economic activity, including xoncessions to search for, extraction or use of natural resources.

(3) The term "returns" means the amount of money received from an investment and, in particular, but not limited to include profits, interest associated with the loan, dividends, royalties and income from capital.

(4) The term "territory" means the territory of each of the Contracting Parties, as defined by the legislation of Contracting Parties and in accordance with international law.

Article 2. Scope

This Agreement shall apply to investments of investors of one Contracting Party made in the territory of another Contracting Party in accordance with its laws and regulations, regardless of whether they were made before or after the entry into force

of this Agreement.

Article 3. Promotion, Admission

(1) Each Contracting Party shall encourage in its territory investments of investors of the other Contracting Party, and admit such investments in accordance with its laws and regulations.

(2) Each Contracting Party shall in its territory will contribute in accordance with their laws, the rovision of the necessary permits related to such investments.

Article 4. Investment Protection

(1) Each Contracting Party shall protect within its territory investments of investors of the other Contracting Parties and will not cause harm by unjustified or discriminatory measures to the management, preservation, use, disposal, expansion and, on occasion, the liquidation of such investments.

(2) Each Contracting Party shall ensure fair and equitable treatment within its territory to investments of investors of the other Contracting Party. This treatment will be no less favorable than that accorded to each Contracting Party to its own investors, or than that, which is given to each Contracting Party to investment investors of a third State, implemented within their territory when the latter mode is more favorable.

(3) If a Contracting Party shall provide special advantages to investors of any third state by virtue of an agreement establishing a free trade area, customs union or common market or a similar regional organization or by virtue of agreements the avoidance of double taxation, it is not obligated to provide such advantages to investors of the other Contracting Party.

Article 5. Free Transfer of Funds

(1) Each Contracting Party shall provide Investors free transfer of cash payments related to or their investment income, after taxes and all mandatory payments stipulated by the national law of the Contracting Party in whose territory investments were realized. Such transfers include:

a) profits, revenues, service fees and commissions;

b) the amount intended for the repayment of loans;

c) the amount intended to cover the costs related to investment management;

d) royalties and other payments deriving from rights enumerated in subparagraphs (c), (d) and (e) of paragraph 2 of Article 1 of this Agreement;

e) the additional capital investment required to maintain and development investment;

f) proceeds from the sale or partial or total liquidation of investment, including a possible increase in value;

g) wages and other remuneration of foreign employees;

h) the means of legally obtained from other sources.

(2) Transfers will be carried out without undue delay in a freely convertible currency. Such transfers shall be made at the exchange rate employed in the transaction and is in accordance with the procedure under the laws of the Contracting Party in whose territory the investments were made.

Article 6. Expropriation and Compensation

(1) Neither Contracting Party shall take, directly or indirectly, expropriation measures, nationalizing or any other measures or actions of a similar nature in relation to investments of investors of the other Contracting Party except for measures taken in the higher public interest, in a non-discriminatory basis and with due respect for the law, as well as provided that they are accompanied by adequate and effective compensation. The amount of compensation, including interest, must be paid in the currency in which the investments were made without delay the person entitled to it, regardless of its residence or domicile.

(2) Investors of one Contracting Party whose investments suffered losses as a result of war or any other armed conflict,

revolution, a state of emergency or other similar events that took place on the territory of the other Contracting Party, it will be provided by the latter mode in accordance with the paragraph 2 of Article 4 of this Agreement with respect to restitution, insurance, payment, compensation or other consideration.

Article 7. Principle of Subrogation

(1) If a Contracting Party or its designated agency (hereinafter referred to as the "Indemnifying Party") shall pay for indemnification or guarantee given in respect of the investment of an investor Investment (hereinafter referred to as "Indemnified Party") in the territory of the other Contracting Party (hereinafter referred to as the "Host Party"), the Host Party shall recognize:

a) the assignment to the Indemnifying Party of all the rights and claims for investments; and

b) the right of the Indemnifying Party to exercise all such rights and to collect such claims by virtue of subrogation.

(2) The Indemnifying Party have under all circumstances the right to:

a) the same treatment in respect of the rights and claims acquired by it, by virtue of the assignment referred to in paragraph (1); and

b) the same payments due in accordance with the rules and requirements to which the Indemnified Party it was entitled by virtue of this Agreement in respect of the relevant investment.

Article 8. Disputes between a Contracting Party and an Investor the other Contracting Party

(1) For the purpose of settlement of disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party and without prejudice to Article 9 of this Agreement (Disputes between Contracting Parties), consultations will be held between disputing parties.

(2) If these consultations failed to resolve the dispute peacefully by a period of six months, the investor may at his choice, submit the dispute for resolution:

a) in the courts of the Contracting Parties in accordance with their competence, having territorial jurisdiction;

b) the International Centre for Settlement of Investment Disputes, established by the Convention for the settlement of disputes relating to investment between States and Nationals of Other States (ICSID), opened or signature in Washington, DC March 18, 1965.

c) an "ad hoc" arbitral tribunal ", to be established in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), if the parties have agreed otherwise.

(3) Each Contracting Party declares its writing agreement to refer a dispute relating to investments in international arbitration.

(4) The Contracting Party which is a party to the dispute, may not at any stage of the procedure or execution of the decision refer to the fact that the investor has received by virtue of an insurance contract compensation covering the whole or in part of the damage suffered.

Article 9. Disputes between the Contracting Parties

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

(2) If both Contracting Parties cannot reach an agreement within six months after the beginning of the dispute between them, the dispute shall, at the request of either Contracting Party shall it be submitted to an arbitral tribunal consisting of three members. Each Contracting Party shall appoint one arbitrator and the two arbitrators shall elect a President who shall be a citizen of a third State.

(3) If one of the Contracting Parties has not appointed an arbitrator or followed the invitation of the other Contracting Party to make such appointment within two months, the arbitrator shall be appointed at the request of the latter by the President of the International Court of Justice.

(4) If both arbitrators cannot reach an agreement on the choice of the President within two months after their appointment, the latter shall be appointed at the request of either Contracting Party to the International Court of Justice.

(5) If in the cases referred to in paragraphs 3 and 4 of this Article, the President of the International Court of Justice cannot, for whatever reason, discharge the said function or if he is a citizen of one of the Contracting Party, the appointment shall be made by the Vice President, and if the latter can not, for whatever reasons perform this function or if he is a citizen of one of the Contracting Parties, the appointment shall be made by a senior Judge who is not a citizen of either Contracting Parties.

(6) Each Contracting Party shall bear the costs related to the activities of its designated member of the court, and their participation in the arbitration. Expenses related to the activities of the President of the tribunal, and also all the other expenses shall be borne by the parties in equal parts. For all other matters, the arbitral tribunal determines its own rules of procedure, unless the Contracting Parties agree otherwise.

(7) The decisions of the arbitral tribunal are final and binding for the performance of each Contracting Party.

Article 10. Other Obligations

(1) If the provisions of the legislation of each Contracting Parties or international law entitle investments of investors of the other Contracting Party a treatment more favourable than that provided for in this Agreement, then such regulations and rules shall prevail over the present Agreement to the extent that they are more favourable.

(2) Each Contracting Party shall observe its accepted obligations in respect of investments of investors of the other Contracting Party.

Article 11. Amendments and Additions

This Agreement may be amended by mutual agreement of the Contracting Parties.

Article 12. Final Provisions

(1) This Agreement shall enter into force on the date of the last notification by the Parties about the implementation of domestic procedures, necessary for the entry into force of this Agreement, and will be valid for ten years. The Agreement will be automatically renewed for subsequent ten-year periods, until one of the Contracting Parties sends the other Contracting Party a written notice of its termination six months prior to the expiration of the relevant period.

(2) In case of formal notice of termination of this Agreement, the provisions of Articles 1-10 will continue to be valid for an additional period of ten years in respect of investments made before giving the official notice.

Done in the city of Bishkek on December 4, 1999 in two original copies, each in Kyrgyz, Mongolian and Russian languages, being all texts equally authentic. In case of discrepancies, priority will be given to the text in Russian.

For Government of the Kyrgyz Republic

For Government of Mongolia