

# **Agreement between the Government of the French Republic and the Government of the Republic of Kazakhstan on the reciprocal encouragement and protection of investments**

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

Desiring to strengthen economic cooperation between the two States and to create favorable conditions for increasing investments between the two countries

Convinced that the encouragement and protection of such investments will stimulate the transfer of capital and technology between the two countries in the interest of their economic development

Have agreed on the following provisions:

## **Article 1.**

For the application of this agreement:

1. The term "investment" means assets of every kind, such as property, rights and economic or financial interests and, more particularly but not exclusively:

(a) movable and immovable property, and all other rights in rem such as mortgages, liens, usufructs, bonds and similar rights ;

(b) shares, share premiums and other forms of participation, even if minority or indirect, in companies incorporated in the territory of one of the Contracting Parties

(c) Bonds, debts and rights to any benefits of economic value;

(d) copyrights, industrial property rights (such as patents, licenses, trademarks and registered names, industrial models and layouts), technological processes, know-how and goodwill

(e) concessions granted by law or under contract, including concessions for the exploration, cultivation, extraction or exploitation of natural resources, including those in the maritime area of the Contracting Parties as defined in paragraph 5 of this Article.

It is understood that investments must be or have been made in accordance with the laws of the Contracting Party in whose territory or maritime area the investment is made, whether before or after the entry into force of this Agreement.

Any change in the form of the investment shall not affect its characterization as an investment, provided that such change is not contrary to the law of the Contracting Party in whose territory or maritime area the investment is made.

2. The term "nationals" means natural persons who are nationals of the French Republic or the Republic of Kazakhstan, in accordance with the legislation of each of the Contracting Parties.

3. The term "companies" means any legal entity incorporated in the territory of one of the Contracting Parties in accordance with the legislation of that Contracting Party and having its registered office there, or controlled directly or indirectly by nationals of one of the Contracting Parties, or by legal entities having their registered office in the territory of one of the Contracting Parties and incorporated in accordance with the legislation of that Contracting Party.

4. The term "income" means all sums produced by an investment, such as profits, interest, royalties or dividends during a given period.

Income from the investment and, in the case of reinvestment, income from reinvestment shall enjoy the same protection as the investment.

5. This Agreement shall apply to the respective territories of the Republic of France and the Republic of Kazakhstan as well as to their maritime zones, hereinafter defined as the economic zone and the continental shelf which extend beyond

## **Article 2.**

Each of the Contracting Parties shall admit and encourage, within the framework of its national legislation and the provisions of this Agreement, investments made by the nationals and companies of the other Contracting Party in its territory and in its maritime zone.

## **Article 3.**

Each Contracting Party undertakes to ensure, in its territory and in its maritime zone, fair and equitable treatment, in accordance with the principles of international law, of investments by the nationals and companies of the other Contracting Party, and to ensure that the exercise of the right so recognized is not hindered either in law or in fact.

## **Article 4.**

Each Contracting Party shall, in its territory and in its maritime zone, apply to the nationals or companies of the other Contracting Party, in respect of their investments and activities related to such investments, treatment no less favourable than that accorded to its nationals or companies, or the treatment accorded to the nationals or companies of the most favoured Nation, whichever is more favourable.

Such treatment shall not, however, extend to privileges accorded by a Contracting Party to nationals or companies of a third State by virtue of its participation in or association with a free trade area, customs union, common market or other form of regional economic organization, or by virtue of a double taxation agreement or other agreement in the tax area.

## **Article 5.**

1. Investments made by nationals or companies of either Contracting Party shall enjoy full protection and security in the territory and maritime area of the other Contracting Party.

2. The Contracting Parties shall not take measures of expropriation or nationalization or any other measures the effect of which is to dispossess, directly or indirectly, the nationals and companies of the other Contracting Party of investments belonging to them in their territory and maritime area, except in the public interest and provided that such measures are not discriminatory or contrary to any particular commitment of the Contracting Party concerned or of its appropriate institutions.

Any measures of dispossession which may be taken shall give rise to the payment of prompt and adequate compensation, the amount of which, calculated on the real value of the investments concerned, shall be assessed by reference to a normal economic situation prior to any threat of dispossession.

This indemnity, its amount and the way it is to be paid shall be fixed at the latest on the date of the dispossession. Such compensation shall be effectively realizable, paid without delay, freely transferable and shall include interest at the appropriate rate until the date of payment.

3. The nationals or companies of one of the contracting parties whose investments have suffered losses as a result of war or any other armed conflict, revolution, state of national emergency or revolt occurring in the territory or maritime area of the other contracting party, shall be accorded by the latter, for the purpose of compensation for such losses, treatment no less favourable than that accorded to its own nationals or companies or to those of the most favoured nation, if the latter is more favourable.

## **Article 6.**

Each Contracting Party shall, in the territory or maritime area of which investments have been made by nationals or companies of the other Contracting Party, accord to such nationals or companies the free transfer of :

(a) Interest, dividends, profits and other current income ;

- (b) royalties derived from the intangible rights referred to in paragraph 1(d) and (e) of Article 1
- c) Payments made for the repayment of loans regularly contracted;
- d) Proceeds from the total or partial sale or liquidation of the investment, including capital gains on the investment
- (e) the compensation for loss or dispossession provided for in Article 5, paragraphs 2 and 3 above.

Nationals of each of the Contracting Parties who have been authorized to work in the territory or maritime area of the other Contracting Party, in connection with an approved investment, shall also be authorized to transfer to their country of origin an appropriate portion of their remuneration.

The transfers referred to in the preceding paragraphs shall be made without delay at the normal rate of exchange officially applicable on the date of transfer in the country in whose territory or maritime zone the investment is made.

## **Article 7.**

Insofar as the legislation of one of the Contracting Parties provides for a guarantee for investments made abroad by nationals or companies of that Contracting Party, such guarantee may be granted, on a case-by-case basis, to investments made by nationals or companies of that Contracting Party in the territory or maritime zone of the other Contracting Party.

Investments by nationals and companies of one of the Contracting Parties in the territory or maritime area of the other Contracting Party may only obtain the guarantee referred to in the above paragraph if they have first obtained the approval of the latter Contracting Party, if such approval is required.

## **Article 8.**

Any investment dispute arising between one of the Contracting Parties and a national or company of the other Contracting Party shall, as far as possible, be settled by direct negotiations and consultations between the two parties concerned.

If such a dispute has not been settled within six months from the time it was raised by either party to the dispute, it may then be submitted, at the option of the national or company :

- either to arbitration by the International Centre for Settlement of Investment Disputes (ICSID), provided that both Contracting Parties are parties to the Agreement on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature in Washington, D.C., on March 18, 1965;
- to arbitration by an ad hoc arbitral tribunal established in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

## **Article 9.**

If one of the Contracting Parties, by virtue of a guarantee given for an investment made in the territory or maritime area of the other Contracting Party, makes payments to one of its nationals or to one of its companies, it is thereby subrogated to the rights and actions of such national or company.

However, such payments shall not affect the rights of the beneficiary of the guarantee to have recourse to ICSID or to pursue actions brought before it until the proceedings have been completed.

## **Article 10.**

Investments which have been the subject of a special undertaking by one of the Contracting Parties in respect of the nationals and companies of the other Contracting Party shall, without prejudice to the provisions of this Agreement, be governed by the terms of that undertaking insofar as it contains provisions more favourable than those contained in this Agreement.

## **Article 11.**

1. Disputes concerning the interpretation or application of this Agreement shall be settled, if possible, through diplomatic channels.
2. If the dispute is not settled within six months of its being raised by either Contracting Party, it shall be submitted, at the

request of either Contracting Party, to an arbitration tribunal.

3. The said tribunal shall be constituted for each particular case in the following manner:

Each Contracting Party shall appoint one member, and the two members shall appoint, by mutual agreement, a national of a third State who shall be appointed by both Contracting Parties as Chairman. All members shall be appointed within two months of the date on which one Contracting Party has notified the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the time limits specified in paragraph 1 have not been observed, either Contracting Party shall, in the absence of any other agreement, invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or is otherwise unable to serve, the most senior Deputy Secretary-General who is not a national of either Contracting Party shall make the necessary appointments.

5. The Arbitration Tribunal shall take its decisions by a majority vote. Such decisions shall be final and binding on the Contracting Parties.

The Tribunal shall determine its own rules. It shall interpret the award at the request of either Contracting Party. Unless the Tribunal decides otherwise, taking into account special circumstances, the costs of the arbitration proceedings, including the fees of the arbitrators, shall be shared equally by the Contracting Parties.

## **Article 12.**

Each of the Contracting Parties shall notify the other of the completion of the internal procedures required for the entry into force of this agreement, which shall take effect one month after the date of the last notification.

The Agreement is concluded for an initial period of ten years. It shall remain in force for successive periods of ten years, unless one of the Contracting Parties denounces it through diplomatic channels at least one year before the expiration of the current period of validity.

Upon the expiration of the period of validity of this Agreement, investments made while it was in force shall continue to enjoy the protection of its provisions for a further period of twenty years.

Done at Paris, this 3rd day of February 1998, in two originals, each in the French, Russian and Kazakh languages, the three texts being equally authentic.

For the Government of the French Republic:

Jacques Dondoux

Secretary of State for Foreign Trade

For the Government of the Republic of Kazakhstan:

Assygate A. Jabaguine

Minister of Energy, Industry and Trade

## **PROTOCOL**

Upon signing the Agreement between the Government of the French Republic and the Government of the Republic of Kazakhstan on the reciprocal encouragement and protection of investments, it was agreed between the two Contracting Parties that the following provisions shall form an integral part of the Agreement

With regard to Article 1, paragraph 3:

Direct or indirect control of a legal person may be established in particular by the following facts:

- the status of a subsidiary ;

- a direct or indirect shareholding percentage allowing effective control, and in particular a shareholding exceeding 50%;
- the direct or indirect possession of voting rights which enables the company to have a decisive position in its governing bodies, or otherwise to influence its operation in a decisive manner.

With regard to Article 3:

(a) Any restriction on the purchase and transportation of raw and auxiliary materials, energy and fuel, and means of production and operation of any kind, any impediment to the sale and transportation of products within the country and abroad, and any other measures having an effect analogous to a de jure or de facto impediment to fair and equitable treatment, shall be deemed to be impediments;

(b) The contracting parties shall, within the framework of their domestic legislation, give sympathetic consideration to applications for entry and authorization to stay, work, and travel submitted by nationals of a contracting party in connection with an investment made in the territory or maritime area of the other contracting party. Nationals authorized to work in the territory and maritime zone of one of the Contracting Parties must be able to benefit, in accordance with the legislation of that Contracting Party, from the material conditions necessary for the exercise of their professional activities.

Done at Paris, on 3 February 1998, in two originals, each in the French, Russian and Kazakh languages, the three texts being equally authentic.

For the Government of the French Republic :

Jacques Dondoux

Secretary of State for Foreign Trade

For the Government of the Republic of Kazakhstan :

Assygate A. Jabaguine

Minister of Energy, Industry and Trade