

# **17/11/2014 AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF LATVIA AND THE GOVERNMENT OF KAZAKHSTAN ON THE PROMOTION OF INVESTMENTS AND ITS...**

## **AGREEMENT ON THE PROMOTION OF INVESTMENT AND MUTUAL PROTECTION**

The Government of the Republic of Latvia and the Government of the Republic of Kazakhstan (hereinafter referred to as "the Contracting Parties");

Recognizing the need to protect investors of one Contracting Party in the territory of the other Contracting Party in a non-discriminatory manner;

Desiring to cooperate by expanding economic cooperation between the natural and legal persons of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the agreement on the regime applicable to such investments will stimulate the flow of private capital and the economic development of the Contracting Parties;

Agreeing that a solid foundation for investment will contribute to maximizing the efficient use of economic resources and improve living standards;

Have agreed as follows:

### **Article 1. Definitions**

The purpose of this Agreement is:

1. The term "investment" means all types of assets invested by investors of the same Contracting Party in the territory of the other Contracting Party for the purpose of conducting business in accordance with the laws and regulations of the latter Contracting Party and the rights thereunder and, inter alia, but not limited to:

(A) movable and immovable property, as well as property rights, such as lease rights, mortgages and pledges;

(B) shares, shares, notes and other forms of participation in a capital company;

(C) claims for money or any other performance in the context of a commercial contract of economic value;

(D) intellectual property rights, including copyright, trademarks, patents, designs and technical processes, non-proprietary know-how, commercial secrets, trade names and good-will of the company;

(E) business benefits granted under a law or a commercial contract, including the benefits for the search, cultivation, acquisition or use of natural resources.

Changes in the form of investment assets, if conducted in accordance with the laws and regulations of the Contracting Party in whose territory the investment was made, shall not prejudice the application of the provisions of this Agreement to the protection of investors' interests and rights.

2. The term "investor" means any natural or legal person making investments in the territory of the other Contracting Party.

(A) for the Republic of Latvia:

(i) "natural person" means a citizen or non-citizen in accordance with the laws and regulations of the Republic of Latvia and,

in accordance with the terms of this Agreement, the term "non-citizen";

(ii) "legal entity" means a company (company) or a capital company public

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An organization, association and foundation established or established in accordance with the laws and regulatory enactments of the Republic of Latvia;

(B) as regards the Republic of Kazakhstan:

(i) "natural person" means a citizen of the Republic of Kazakhstan or a person permanently resident in the territory of the Republic of Kazakhstan who, under the law of his country, is entitled to invest;

(ii) "legal entity" means a legal entity or organization which does not have legal personality established or registered in accordance with the legislation of the Republic of Kazakhstan.

3. The term "income" means means derived from the realization of investments and includes profits, interest income, income from capital, dividends, royalties, fees for licenses and other payments.

4. The term "territory" means the territory of a Contracting Party, including the terrestrial, internal and territorial waters and the airspace above them, as well as adjacent seaboard areas, including the seabed, subsoil, where the Contracting Parties exercise their sovereign rights or jurisdiction over natural resources in such territories For research and exploitation purposes, in accordance with national law and international law.

## **Article 2. Investment Promotion and Protection**

1. Each Contracting Party shall encourage and create favorable conditions for the investors of the other Contracting Party to carry out investments in its territory and accept such investments in accordance with its laws and regulations.

2. Each Contracting Party shall accord to its investors, on its territory, fair and equitable treatment of investments and investment income of investors of the other and full and consistent protection and security of investors.

3. The Contracting Parties shall not, in their territory, take unfair, discriminatory or arbitrary measures against the extension, management, maintenance, use, gaining and sale of investments made by the other Contracting Party or any other type of conduct.

## **Article 3. Investment Mode**

1. Each Contracting Party shall accord to its investors, investors and investors in the territory of the other Contracting Party treatment no less favorable than that which it accords to its investors or third-country investors and their investments with regard to the expansion, management, maintenance of the investment, Use, gaining and selling, or otherwise acting.

2. Each Contracting Party shall grant investors of the other Contracting Party more favorable treatment of their investments and return on investments than those referred to in paragraph 1 of this article.

## **Article 4. Exemptions**

The provisions of this Agreement shall not be construed so as to oblige a Contracting Party to extend to the investors of the other Contracting Party, their investments and income from investments the benefits, facilities or privileges of any and all future arrangements resulting from:

(A) membership of a free trade area, customs union, monetary union, common market and any international agreement to which one of the Contracting Parties is a party and with which such unions or similar associations have been established;

(B) any international agreement or national law of a Contracting Party, which is wholly or mainly related to taxation.

## **Article 5.**

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1. A Contracting Party shall not engage in the expropriation or nationalization of investments by investors of the other Contracting Party, either directly or indirectly, or subject to any measures having equivalent effect (hereinafter referred to as "expropriation"), except in the case of:

(A) in the public interest;

(B) in a non-discriminatory manner;

(C) in accordance with the procedure laid down by law; And

(D) immediate, appropriate and effective compensation in accordance with paragraphs 2 and 3 of this article.

2. Compensation:

(A) is paid without delay. The losses caused by the delay as a result of exchange rate changes shall be borne by the Contracting Party accepting the investment;

(B) is equivalent to the fair market value of the expropriated investment immediately before expropriation. The fair market value is not affected by any changes in value associated with the fact that expropriation has become publicly known in the past;

(C) fully realizable and freely transferable;

(D) includes a commercial interest rate, which is calculated from the market value of the payment currency, from the moment of expropriation to the moment of payment.

3. An investor of any Contracting Party who claims to have suffered expropriation by the other Contracting Party shall have the right to an immediate investigation, including an assessment of the investment and payment of compensation in accordance with the provisions of this Article, to the judicial authority of the last Contracting Party or another competent and independent authority.

## Article 6. Compensation for Losses

1. An investor of a Contracting Party who has suffered loss as a result of his contribution to a war or other armed conflict, state of emergency, revolution, riot, civil unrest or other similar events in the territory of the other Contracting Party, the latter Contracting Party shall apply for restitution, reimbursement, compensation or other A settlement arrangement which is no less favorable than the treatment accorded by the latter Contracting Party to its own investors or to investors of any third country, whichever is the more favorable to the investor concerned.

2. A Contracting Party to an investor who, in one of the cases referred to in paragraph 1 of this article, suffers damage caused by:

(A) confiscation of his contribution or parts thereof by the armed forces or authorities of the other Contracting Party; Or

(B) the destruction by the armed forces or the authorities of the other Contracting Party of his investment or parts thereof, which was not due to the necessity of circumstances,

The last Contracting Party grants restitution or compensation in any event, which in both cases is immediate, appropriate and effective. Compensation is paid in accordance with Article 5 (2) and (3).

## Article 7. Transfers

1. Each Contracting Party shall, in accordance with its laws and regulations, ensure the transfer to and from its territory of transfers of investments and transfers of investment-related contributions between investors of the other Contracting Party. Such payments include, but are not limited to:

(A) initial capital and additional amounts in order to maintain or increase investment;

(B) income;

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(C) proceeds from the sale or disposal in whole or in part of the investment;

(D) payments under commercial contracts, including loan payments;

(E) the compensation payable in accordance with Articles 5 and 6;

(F) payments arising out of an investment dispute;

(G) salary and other remuneration for staff engaged from abroad and working in connection with an investment.

2. Each Contracting Party shall ensure that transfers relating to Part 1 of this Section are made in freely convertible currency and in accordance with the prevailing commercial exchange rate on the date of transfer in force in the Contracting Party in whose territory the investments are accepted.

3. In the event that the foreign exchange market does not exist, the rate applied is the last exchange rate applied to the conversion of currencies by attaching its Special Drawing Rights (SDR) currency basket.

4. Notwithstanding paragraphs 1, 2 and 3 of this article, a Contracting Party may restrict the transfer, by applying, on an equal, non-discriminatory basis and in good faith, its laws relating to:

(A) bankruptcy, insolvency or protection of creditors' rights;

(B) the release, sale or operation of securities, futures, options, or derivatives;

(C) criminal or criminal offenses;

(D) financial reports or filing of transfers for transfers where it is necessary to ensure the application of laws or to cooperate with financial regulators; Or

(E) to ensure the enforcement of judgments and judgments handed down in judicial or administrative proceedings.

## **Article 8. Takeover Rights**

1. If a Contracting Party or an agency designated by it makes a payment to its investors in accordance with the guarantees it has granted in respect of investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(A) the transfer of any such investor's rights or claims to the first Contracting Party or its designated agency under a law or legal transaction in that country; and

(B) that the first Contracting Party or its designated agency, having taken over investor's rights, is entitled to exercise the rights and claims of an investor and to undertake an investment commitment in the same amount as an investor.

2. Replaced rights and claims do not exceed the investor's original rights and claims.

## **Article 9. Settlement of Disputes between a Contracting Party and Investors of the other Contracting Party**

1. Any dispute between an investor of a Contracting Party and the other Contracting Party concerning the interpretation or application of this Agreement shall, as far as possible, be settled by consultation through diplomatic channels.

2. If the dispute is not resolved within three months of the submission of a written notice of claim, the investor is entitled to file a case of choice:

(A) the competent court of the Contracting Party in whose territory the contribution was made; Or

(B) The International Arbitration Court for Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and the Natural and Legal Persons of other States, opened for signature in Washington, DC on March 18, 1965 (hereinafter referred to as "the Center"), If the Contracting Party to the dispute and the Contracting Party of the Investor are Parties to this Convention; Or

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(C) the ICSID, in addition to the institution's arbitration, if either the Contracting Party to the dispute or the Contracting Party of the Investor has acceded to this Convention;

(D) any special arbitration tribunal which, unless otherwise agreed by both Contracting Parties, is established in accordance with the provisions of the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. No Contracting Party which is party to the dispute, arbitration or after the award of an arbitration award may raise objections based on the fact that the investor involved in the dispute has received, in whole or in part, indemnity for insurance.

4. An arbitral tribunal established in accordance with this Article shall take decisions in accordance with the national law of the Contracting Party involved in the dispute, the provisions of this Agreement, and the applicable rules of international law.

5. The judgment of the arbitral tribunal shall be final and binding on both parties. Both Contracting Parties undertake to comply with the arbitration award.

## **Article 10. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by consultation through diplomatic channels.

2. If, therefore, the dispute can not be resolved within three (3) months, it shall, at the request of one of the Contracting Parties, be submitted to arbitration in accordance with the provisions of this article.

3. The Arbitration Tribunal shall be established for each individual case in the following manner. Within two months (2), upon receipt of the request of the arbitral tribunal, each Contracting Party shall appoint one arbitrator. These two arbitrators then choose a third-country national who, by agreement of the parties, is appointed as the chairperson of the arbitration panel (hereinafter referred to as the "Chairman"). The chairman shall be appointed within two (2) months after the appointment of two arbitrators.

4. If officials are not appointed within the time limits specified in paragraph 3 of this article, they may ask the President of the International Court of Justice to make the appointment of the necessary officials. If the President of the International Court of Justice is a national of a Contracting Party or is otherwise unable to fulfill these functions, the Vice-President shall be called upon to make the appointment of the necessary officials. If the Vice-President is also a national of a Contracting Party or is otherwise unable to perform such functions, the next highest ranking member of the International Court of Justice, who is not a national of either Contracting Party, is invited to make the appointment of the necessary officials.

5. The arbitral tribunal shall take decisions by a majority of votes. Such a decision is final and binding. Each Contracting Party shall bear the costs of its arbitrator and the costs of legal representation in arbitration proceedings. The costs of the President's services and other costs shall be borne in equal installments by both Contracting Parties. The Arbitral Tribunal, however, may decide that one of the Contracting Parties shall bear a larger amount of costs and such a judgment shall be binding on both Contracting Parties. The arbitral tribunal shall determine its own procedure.

## **Article 11. Application of other Rules and Special Obligations**

1. If a question is simultaneously determined by this Treaty and another international agreement signed by both Contracting Parties, no provision of this Agreement shall prevent either the Contracting Party or any of its investors who own investments in the territory of the other Contracting Party from using the provisions which They are more profitable in that particular case.

2. Where the treatment accorded by one Contracting Party to investments of investors of the other Contracting Party in

accordance with its laws and regulations or other contractual provisions is more favorable than that granted by this Agreement, the most-favored-nation treatment shall apply.

## **Article 12. Application of the Contract**

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This Agreement applies to investments made in the territory of one Contracting Party in accordance with its laws and regulations by investors of the other Contracting Party before or after the entry into force of this Agreement, but does not apply to disputes or claims arising out of investments prior to the entry into force of this Agreement.

## **Article 13. General Exceptions**

1. Nothing in this Agreement shall be construed to limit the Contracting Parties to take the steps necessary to protect their security interests during a war or an armed conflict.

2. Assuming that such conduct is not unlawful or unlawful, or does not create concealed restrictions on international trade or investment, nothing in this Agreement shall be construed to limit the Contracting Party to introduce and take measures, including environmental measures:

(A) necessary to maintain public order;

(B) necessary to protect the life or health of humans, animals or plants.

3. The provisions of this Article shall not apply to Articles 5, 6 or 7 (1) (e) of this Agreement.

## **Article 14. Openness**

1. Each Contracting Party shall promptly publish or provide to the public its generally applicable laws, regulations, procedural and administrative practices and judicial decisions, as well as international treaties that may affect the investment of investors of the other Contracting Party in the territory of the first Contracting Party.

2. This Agreement does not oblige a Contracting Party to provide or provide access to any confidential information or information relating to ownership, including information relating to individual investors and their investments, the disclosure of which may be liable to the enforcement of the law or which is in conflict with laws protecting Confidentiality or may harm the legitimate commercial interests of a particular investor.

## **Article 15. Consultation**

The Contracting Parties shall, at the request of one of the Contracting Parties, hold consultations to review the application of this Agreement and to analyze any issues that may arise from this Agreement. Such consultations shall be held between the competent authorities of the Contracting Parties on the channels in question at a coordinated place and time.

## **Article 16. Entry Into Force, Duration and Termination**

1. Subject to the mutual consent of the Contracting Parties, this Agreement may be amended and supplemented, which shall take the form of separate protocols forming an integral part of this Agreement.

2. This Agreement, as well as the amendments and additions made in accordance with paragraph 1 of this article, shall enter into force on the date of receipt of the last written notification of the internal procedures performed by the Contracting Parties required for the entry into force of the Agreement.

3. This Agreement shall be concluded for a period of 10 years, and thereafter its operation shall be extended for further periods, unless one of the Contracting Parties, twelve months earlier, notifies the other Contracting Party in writing of its intention to terminate this Agreement.

4. Investments made prior to the termination of this Agreement shall continue to be subject to the provisions of Articles 1 to

15 of this Agreement for a period of ten years from the date of expiry of this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Agreement.

Done in duplicate in Astana on October 8, 2004 in the Latvian, Kazakh and Russian languages, and the texts are in

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Equally authentic.

If there are differences in interpretation, the text in Russian is predominant.

For the Government of the Republic of Latvia For the Government of the Republic of Kazakhstan

MASTER NUTRITION ADILBEKS JAKASIBEKOV

Ministry of Foreign Affairs of the Republic of Latvia, State Secretary for Industry and Commerce of the Republic of Kazakhstan

The minister

PROTOCOL

GOVERNMENT OF THE REPUBLIC OF LATVIA AND GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN ON THE PROMOTION OF INVESTMENT AND MUTUAL PROTECTION

By signing the Agreement between the Government of the Republic of Latvia and the Government of the Republic of Kazakhstan on the Promotion and Protection of Investments, the undersigned representatives of the Parties have agreed on the following provisions, which form an integral part of the Agreement:

Referring to Article 1

The Government of the Republic of Kazakhstan takes note of the statement by the Government of the Republic of Latvia that the term "non-citizen" in Article 1 (2) (a) (i) refers to a person who, in accordance with the Law of the Republic of Latvia "On the Status of Citizens of the Former USSR Without Latvia or Other National citizenship "is entitled to a non-citizen's passport issued by the Republic of Latvia.

For the Government of the Republic of Latvia For the Government of the Republic of Kazakhstan

MASTER NUTRITION ADILBEKS JAKASIBEKOV

Ministry of Foreign Affairs of the Republic of Latvia, State Secretary for Industry and Commerce of the Republic of Kazakhstan

The minister

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