

# **Agreement between the Government of the Republic of Kyrgyzstan and the Government of the People's Republic of China on the promotion and mutual protection of investments**

The Government of the Republic of Kyrgyzstan and the Government of the People's Republic of China hereinafter referred to as the "Contracting Parties",

Willing to encourage, protect and create favorable environment for investors of one Contracting Party to make capital investment in the territory of the other Contracting Party,

Based on the principles of mutual respect for sovereignty, equality and mutual benefit, in order to develop economic cooperation between States,

Have agreed as follows:

## **Article 1.**

For the purposes of this Agreement:

1. The term "investment" means all types of property values that are invested in the territory of a Contracting Party accepting capital investments in accordance with its legislation, including in particular:

- a) Movable and immovable property and property rights;
- b) Stocks or other forms of participation in enterprises and companies;
- c) Rights of claim monetary funds and any obligations having economic value;
- d) Copyrights, industrial property rights, know-how and technology;
- e) The right to conduct economic activities provided in accordance with legislation or contracts, including, in particular, the right to explore and exploit natural resources.

2. The term "investor" means, in respect of each of the Contracting Parties:

- Natural persons who are citizens of this Contracting Party in accordance with its legislation;
- Enterprises and companies established in accordance with legislation in force in the territory of that Contracting Party;

Provided that an individual, enterprise or company is entitled, in accordance with the legislation of that Contracting Party, to invest in the territory of the other Contracting Party.

3. The term "income" means amounts that are received as a result of investments and, in particular, but not exclusively: profits, dividends, interest and licensing fees.

4. The term "territory" means:

- The territory of the Republic of Kyrgyzstan and the territory of the People's Republic of China.

## **Article 2.**

1. Each of the Contracting Parties shall encourage investors of the other Contracting Party to make investments and will allow such investments in its territory in accordance with its legislation.

2. Each of the Contracting Parties shall, in accordance with its legislation, assist in obtaining visas and work permits from

citizens of the other Contracting Party in connection with investments made on its territory.

### **Article 3.**

1. Each of the Contracting Parties undertakes to provide on its territory fair treatment and protection with respect to the investments of investors of the other Contracting Party and activities related to such investments.
2. The regime referred to in paragraph 1 of this article shall be no less favorable than the treatment accorded to investors' investments of any third state and activities related to such investments.
3. The provisions of paragraphs 1 and 2 of this article shall not apply to the benefits and advantages which the Contracting Party grants or will grant to future investors of any third state or their investments on the basis of:
  - Its participation in the free trade zone, customs or economic union, the organization of economic mutual assistance or in an international agreement providing for benefits and advantages similar to those granted to the Contracting Party to the participants of these organizations and entered into force before the date of signing this Agreement;
  - An international agreement and other agreement on taxation matters;
  - Agreements on cross-border trade.

### **Article 4.**

1. Investments of investors of one of the Contracting Parties carried out in the territory of the other Contracting Party can not be nationalized, expropriated or subjected to other measures having similar nationalization or expropriation consequences (hereinafter "expropriation"), except when such measures are taken in public interests, subject to compliance with the procedure established by law, on a non-discriminatory basis and accompanied by payment of compensation.
2. The compensation provided for in paragraph 1 of this article will be calculated on the basis of the real value of the investment directly on the day preceding the day of the adoption or promulgation of the decision on expropriation.

Compensation must be paid without undue delay, be convertible and freely transferable from the territory of one Contracting Party to the territory of the other Contracting Party.
3. If the investments of investors of one Contracting Party are damaged in the territory of the other Contracting Party due to war, state of emergency, civil unrest or other similar circumstances, the Contracting Party in whose territory the investment is made should it take measures to recover damages or other relevant measures, will grant to these investors a regime no less favorable than that granted to investors of any third state.

### **Article 5.**

Each of the Contracting Parties, in accordance with its legislation, guarantees to investors of the other Contracting Party after the performance of all tax liabilities the transfer of amounts in connection with investments, including:

- a) Income, as defined in paragraph 3 of Article 1 of this Agreement;
- b) Amounts from the full or partial liquidation of capital investments;
- c) Payments made in accordance with the loan agreement in connection with investments;
- d) Payments for technical assistance, maintenance and management experience;
- e) Wages and other remuneration received by citizens of the other Contracting Party for work and services performed in connection with investments made in the territory of the first Contracting Party, in the amount provided for by its legislation.
- f) Payments for the performance of the relevant contract works.

### **Article 6.**

The transfer of amounts in accordance with Articles 4 and 5 of this Agreement shall be effected at the official exchange rate of the Contracting Party on the territory of which the investment is made.

### **Article 7.**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through diplomatic channels.
2. If a dispute can not be resolved in this manner within six months from the date of the initiation of a dispute by one of the Contracting Parties, it shall, at the request of any of the Contracting Parties, be referred to the arbitral tribunal.
3. The arbitral tribunal shall consist of three arbitrators and shall be created as follows: within two months from the date of receipt by one of the Contracting Parties of written notification to the other Contracting Party of the transfer of the dispute to arbitration, each of the Contracting Parties shall appoint one arbitrator. These two arbitrators shall, within two months from the date of the appointment of the second arbitrator, elect a third arbitrator, a citizen of a third State who has diplomatic relations with both Contracting Parties, who shall be appointed by the chairman of the arbitral tribunal with the consent of the Contracting Parties.
4. If the arbitral tribunal is not established within four months from the date of receipt of the written notification of the transfer of the dispute to the arbitral tribunal, any of the Contracting Parties may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the chairman is a citizen of one of the Contracting Parties or for another reason can not fulfill this function, the following appointments may be made to the next seniorest member of the International Court of Justice who is not a national of either of the Contracting Parties.
5. The arbitral tribunal itself establishes the rules of procedure. The court makes decisions in accordance with the provisions of this Agreement and the generally recognized principles of international law.
6. The arbitral tribunal takes decisions by a majority of votes, these decisions are final and binding on both Contracting Parties. At the request of any of the Contracting Parties, the arbitral tribunal shall explain the reasons for its decision.
7. Each of the Contracting Parties shall bear the costs associated with the activities of the arbitrator appointed by it and its representation in the arbitration process. Expenses related to the activities of the chairman and other costs will be borne by the Contracting Parties in equal shares.

## **Article 8.**

1. Any dispute between one Contracting Party and an investor of the other Contracting Party concerning the amount of compensation in the event of expropriation may be referred to the arbitral tribunal.
2. Such arbitral tribunal shall be established for each particular case as follows: each of the Parties to the dispute shall appoint one arbitrator, and the two arbitrators shall elect a citizen of a third state who has diplomatic relations with both Contracting Parties, as arbitrator-chairman. The first two arbitrators are appointed within two months, and the chairman is elected within four months from the date of written notification of the transfer of the dispute to arbitration. If no arbitration court is established within the specified timeframes, any of the Parties to the dispute may invite the Chairman of the Arbitration Institute of the Stockholm Chamber of Commerce to make the necessary appointments.
3. The arbitration court itself establishes the rules of procedure. In this case, the court may, in the course of determining the procedure, adopt the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce as a guide.
4. The arbitral tribunal shall render its decision by a majority of votes. Such a decision will be final and binding for both parties to the dispute. Each Contracting Party undertakes to enforce the arbitral award in accordance with its national law.
5. The arbitral tribunal shall render a decision in accordance with the provisions of this Agreement, the legislation of the Contracting Party in whose territory the investments are made, including its conflict rules, as well as the generally recognized principles of international law.
6. Each party to the dispute will bear the costs associated with the activities of the arbitrator appointed by it and its representation in the arbitration process. The expenses related to the activities of the chairman and other expenses will be borne by the Parties in equal parts.

## **Article 9.**

If one of the Contracting Parties, in accordance with its legislation or an international agreement to which both Contracting Parties are parties, accords more favourable treatment to investments by investors of the other Contracting Party or to activities related to such investments than to the treatment accorded to them by this Agreement, the more favourable treatment shall apply.

## **Article 10.**

This Agreement shall apply to investments made by an investor of any of the Contracting Parties in the territory of the other Contracting Party, before or after its entry into force in accordance with the legislation of the other Contracting Party.

## **Article 11.**

1. Representatives of both Contracting Parties will meet as necessary to:

- a) Examine the application of this agreement;
- b) Exchange information on the legal issues of capital investment on the possibility of their implementation;
- c) Resolve disputes arising in connection with capital investments;
- d) Examine other issues related to investments;
- e) Consideration of proposals for making possible amendments and additions to this Agreement.

2. If any of the Contracting Parties proposes to hold consultations on any of the matters provided for in paragraph 1 of this article, the other Contracting Party shall promptly respond and consultations will be held alternately in Bishkek and Beijing.

## **Article 12.**

1. This Agreement shall enter into force after thirty days from the date of written notification by the Contracting Parties to each other of their compliance with the relevant constitutional procedures and shall remain in force for a period of ten years.

2. This Agreement shall remain in force unless either Contracting Party notifies the other Contracting Party in writing of its termination at least one year before the expiration of the period specified in paragraph 1 of this article.

3. At the expiration of the initial ten-year period, each of the Contracting Parties may at any time terminate this Agreement by notifying in writing its intention to the other Contracting Party. Such notification shall take effect 12 months from the date of its receipt by the other Contracting Party.

4. With respect to investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 11 shall remain in force for a further period of ten years from the date of termination of this Agreement.

IN WITNESS WHEREOF the undersigned representatives, as appropriate, authorized by their Representative Offices, have signed this Agreement.

DONE at Beijing on May 14, 1992, in duplicate, each in the Russian and Chinese languages, both texts being equally authentic.

For the Government of the Republic of Kyrgyzstan

For the Government of the People's Republic of China