

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN AND THE GOVERNMENT OF THE REPUBLIC OF AZERBAIJAN ON THE PROMOTION AND PROTECTION OF INVESTMENTS

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

Desiring to strengthen economic cooperation on a long-term basis for the mutual benefit of both Contracting Parties,

Intending to create and support favourable conditions for investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that assistance and reciprocal protection of investments under this Agreement stimulates business initiative in this field,

Have agreed as follows:

Article 1. Definition

For the purposes of this Agreement:

1. "Investments" means every kind of assets invested in connection with the economic activity of investors of one Contracting Party in the territory of the other Contracting Party in accordance with the law in force in the latter and in particular, though not exclusively, includes:

- (a) Movable and immovable property and any property rights such as mortgages and liens;
- (b) Shares, securities, debentures, reinvested income, and special bank and financial deposits related to investment;
- (c) Monetary claims or any other legal claims related to an activity having a financial value;
- (d) Intellectual property rights including rights relating to copyrights, trademarks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill related to investment;
- (e) Reinvested income, repayment of principal and payment of interest under loan agreements;
- (f) Licences and permits under the law, including concessions to prospect for, extract, develop and exploit natural resources.

2. "Investors" means:

- (a) Any natural persons who have citizenship of or permanent residence in any Contracting Party in accordance with its laws;
- (b) Any juridical persons who are constituted under the law in force in one of the Contracting Parties and entitled to invest in the territory of the other Contracting Party.

3. "Returns" means the monetary amounts yielded by investments and in particular, though not exclusively, includes returns, interest, capital gains, dividends, royalties and payment for services.

4. "Territory" means:

- (a) In respect of the Republic of Azerbaijan: the territory of the Republic of Azerbaijan, including the internal waters of the Republic of Azerbaijan, the sector of the Caspian Sea belonging to the Republic of Azerbaijan, the air space above the Republic of Azerbaijan and any other territory which has been or shall in the future be designated under international law and the national legislation of the Republic of Azerbaijan as an area within which the Republic of Azerbaijan exercises its sovereign rights with regard to the subsoil, the seabed, the continental shelf and the natural resources;

(b) In respect of the Republic of Kazakhstan: the State territory of the Republic of Kazakhstan, including the air space, the seabed, the free-trade zones, the continental shelf, the natural resources and the subsoil, over which the Republic of Kazakhstan exercises its sovereign rights and jurisdiction, in accordance with international law.

5. A change in the form of investments which is permitted under the law and under other enactments of a Contracting Party in whose territory the investments were made shall not affect their character as investments.

Article 2. Application of this Agreement

The conditions of this Agreement shall apply to all investments made by the investors of one Contracting Party in the territory of the other Contracting Party both before and after the entry into force of this Agreement.

Article 3. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

2. Investments made by investors of either Contracting Party shall be accorded fair and equitable conditions and full protection and security in the territory of the other Contracting Party.

Article 4. National Treatment and Most-favoured-nation Provisions

1. Each Contracting Party shall in its territory accord to investments by investors of the other Contracting Party treatment which is fair and equitable and no less favourable than that which it accords to investments by its own investors or to investors of a third State.

2. Each Contracting Party shall in its territory accord to investments by investors of the other Contracting Party, as regards management, support, use and disposal of their investments, treatment which is fair and equitable and no less favourable than that which it accords to its own investors or to investors of a third State.

3. The provisions of paragraphs 1 and 2 of this article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by the latter Contracting Party arising from:

(a) Any customs union or free-trade area or similar international agreements which influence investment cooperation arrangements or other forms of regional cooperation to which any Contracting Party is or may become a party;

(b) Any international agreements or arrangements relating wholly or partly to taxation.

Article 5. Compensation for Losses

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, civil unrest or similar situations shall be accorded treatment no less favourable than that accorded to its investors or to investors of third States in compensation for the losses suffered by them as a result of the aforementioned loss-entailing situations. These sums shall be subject to free transfer abroad.

2. Without prejudice to the provisions of paragraph 1 of this article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

(a) Requisitioning of their property by its forces or authorities;

(b) Destruction of their property by its forces or authorities, which was not caused in military action or was not necessitated by the exigencies of the situation;

Shall be accorded fair and adequate compensation for the losses which were suffered by investors at the time of the requisitioning or as a result of the destruction of property.

Payments arising shall be made in freely convertible currency without delay.

Article 6. Expropriation

1. Investments of investors of one Contracting Party shall not be nationalized, expropriated or subjected to measures

tantamount to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except in exceptional cases harmful to the population and State interests of the Contracting Parties. The expropriation shall be carried out under the law of the Contracting Parties on a non-discriminatory basis and against prompt, adequate and effective compensation.

Such compensation shall amount to the market value of the investments when the expropriation or the threat of expropriation became public knowledge, shall include interest at the London Inter-Bank Offered Rate (LIBOR) from the date of expropriation, shall be paid in the currency in which the investment was made or, upon the agreement of the Parties, in any other currency acceptable to the investor, shall be made without delay, be effectively realizable and be freely transferable.

2. Investors suffering expropriation shall have a right to prompt review of their case by a judicial authority of the Contracting Party and to the valuation of their investments in accordance with the principles set out in this article.

3. The provisions of paragraph 1 of this article shall also apply when the Contracting Party expropriates assets of a company which obtained the status of a joint-stock company, or which is constituted under the law in force in any part of its own territory, and in which investors of the other Contracting State have shares.

Article 7. Transfer of Payment Related to Investments

1. The Contracting Parties shall guarantee the free and immediate transfer of funds related to investments in accordance with the procedure proscribed by the legislation of the Contracting Party, which may provide for:

- O Regulations on the registration of such transfers with a view to ensuring that the right of free transfer is not breached;
- O Taxes, duties and deductions from transferred amounts in accordance with the legislation of a Contracting Party;
- O Protection of creditors' legal rights or the enforcement of decisions rendered during the judicial proceedings.

The procedure in this article shall be fair and non-discriminatory.

Transfers under this Agreement shall include:

- O Initial invested capital and any additional foreign capital used for the maintenance or development of investments;
- O Profits;
- O Compensation in accordance with article 5 of this Agreement;
- O Payments arising from the settlement of an investment dispute;
- O Payments under credit agreements, remuneration related to intellectual and industrial property rights and emoluments pursuant to management, maintenance and servicing agreements;
- O Remuneration for work performed on a regular basis by natural persons of the other Contracting Party conducting investment-related activities;
- O Proceeds of the sale or liquidation of part of or all of the investments, provided that the proceeds may be freely transferred only with the authorization of a competent body.

2. Transfers shall be made in a freely convertible currency, without undue delay, at the exchange rate which is effective on the day of the transfer.

A transfer shall be deemed to be made "without undue delay" if effected within the time normally required for the completion of transfer formalities.

Article 8. Subrogation

1. If a Contracting Party or its intermediary makes payments to its own investors under an indemnity which it accorded in connection with investments in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

- (a) The transfer, whether under the law or pursuant to a legal agreement in that State, of any rights of claim from investors to the former Contracting Party or its designated intermediary; and
- (b) That the former Contracting Party or its designated intermediary is entitled by virtue of subrogation to exercise the rights

and assert the claims of those investors and shall assume the obligations related to those investments.

2. The rights and claims obtained as a result of subrogation shall not exceed the rights and claims of the investors.

Article 9. Settlement of Disputes between the Contracting Party and the Investor of the other Contracting Party

1. Any dispute which may arise between the investor of one Contracting Party and the other Contracting Party in connection with investments in the territory of the latter Contracting Party shall be the subject of negotiations between the Contracting Parties involved in the dispute.

2. If any dispute between the investor of one Contracting Party and the other Contracting Party cannot thus be settled within six (6) months from the date on which a written claim was submitted, the investor shall be entitled to refer the matter:

(a) For consideration by the judicial body of the Contracting Party in whose territory the investments were made; or

(b) To the International Centre for the Settlement of Investment Disputes (having regard to the relevant provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington on 18 March 1965), when both Contracting Parties have become parties to this Convention; or

(c) To an arbitrator or ad hoc international arbitration tribunal established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree in writing to change these rules. Arbitration decisions shall be final and binding on both parties to the dispute.

Article 10. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through mutual consultations and negotiations.

2. If such a dispute cannot be thus settled within six (6) months from the date on which it arose, it shall, at the request of either Contracting Party, be submitted to an arbitral tribunal in accordance with the provisions of this article.

3. An arbitral tribunal shall be established for each individual case in the following manner: within two (2) months from the date of a written appeal for an arbitration decision, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who, on approval of the two Contracting Parties, shall be appointed Chair of the tribunal (hereinafter "the Chair"). The Chair shall be appointed within three (3) months from the date of appointment of the two members.

4. If within any of the periods specified in paragraph 3 of this article the necessary appointments have not been made, either Contracting Party may, in the absence of another arrangement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if there are other reasons preventing the President from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If it becomes apparent that the Vice-President is a national of either Contracting Party or is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the appointments and may perform the said function without hindrance.

5. The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding on each Contracting Party. Each Contracting Party shall bear the costs of its own members of the tribunal and of its representation in the arbitral judicial proceedings; the costs related to the Chair and the other costs shall be borne in equal parts by both Contracting Parties. The arbitral tribunal shall determine its own procedure and may, in its decision, determine which Contracting Party shall bear the higher proportion of costs.

Article 11. Application of other Rules and Special Obligations

1. If a matter is governed simultaneously by this Agreement and by another international agreement to which both Contracting Parties are parties, nothing in this Agreement shall prevent the Contracting Parties or any of their investors who are making investments in the territory of the other Contracting Party from taking advantage of those rules which are more favourable to their case.

2. If the treatment to be accorded by one Contracting Party to an investor of the other Contracting Party in accordance with its laws and regulations or other special provisions of contracts is more favourable than that accorded by this Agreement,

the more favourable treatment shall be accorded.

Article 12. Entry Into Force, Amendments and Additions

1. The Contracting Parties shall exchange letters notifying each other of the implementation of the domestic procedures provided for under the legislation of each Contracting Party in respect of the entry into force of international agreements.

The date of entry into force of this Agreement shall be the date of receipt of the last letter of notification.

2. This Agreement shall remain in force for a period of ten (10) years following its entry into force and shall remain in force until it is terminated in accordance with paragraph 6 of this article.

3. The provisions of this Agreement, from the time of its entry into force, shall apply to investments made since 16 December 1991.

4. In respect of investments made prior to the termination of this Agreement, the provisions of all preceding articles of this Agreement shall remain in force for a further period of ten (10) years from the date of its termination.

5. This Agreement may be amended by written agreement between the Parties. Any amendment shall enter force once each Party has notified the other Party of the implementation of the domestic procedures pursuant to paragraph 1 of this article.

6. Each Contracting Party may notify the other Contracting Party in writing one year prior to the termination of force of this Agreement, upon the expiration of the first nine (9) years or at any time thereafter.

In witness whereof the undersigned duly authorized representative have signed this Agreement.

Done in two original copies at Baku on this the sixteenth day of September 1996 in the Kazakh, Azerbaijani and Russian languages, all texts being equally authentic.

In the event of any divergences arising in the interpretation of the provisions of this Agreement, the Russian text shall prevail.

For the Government of the Republic of Kazakhstan:

G. Shtoik

For the Government of the Republic of Azerbaijan:

A. Rasizade