

# **Agreement between the Government of the Republic of Kazakhstan and the Government of Romania on promotion and mutual protection of investments**

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

Desiring to strengthen and expand economic cooperation between the two Contracting Parties,

Desiring to create favorable conditions for investing investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and mutual protection of investments will be promote the economic development of the Contracting Parties

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of the present Agreement:

1. The term "Investments" means all types of property values and rights to them that investors of one Contracting Party invest in the territory of the other Contracting Party in accordance with its legislation, in particular but not exclusively:

- movable and immovable property and any other related property rights, including guarantees, liens, easements, mortgages;
- Shares, shares, bonds, and any other forms of participation in enterprises, joint-stock companies, and in other legal entities recognized by law registered in accordance with the legislation of each of the Contracting Parties;
- Loans, loans, targeted bank and financial contributions and other monetary requirements related to the implementation of investments;
- Rights to intellectual property objects, including objects protected by copyright, patents, trademarks, service marks, goodwill, trade names, industrial designs, business secrets and know-how;
- The rights to concessions in accordance with the law, including concessions for the exploration, extraction and exploitation of natural resources, as well as other rights granted by law, contract or decision of authority in accordance with the law;
- Reinvestment of income and payments of principal and interest on loan agreements.

The change in the form of the investment permitted in accordance with legislation and other regulations of the State of the Contracting Party in whose territory the investment was made does not change its nature as an investment.

2. The term "investor" refers, in respect of the Contracting Parties, to:

- (a) Individuals who, in accordance with the law of one Contracting Party, are considered to be its nationals;
- (b) Any legal entity established in accordance with the current legislation of one of the Contracting Parties;

3. The term "incomes" means:

Funds received as a result of investments or associated with them, in cash or in kind, including profits, dividends, management fees, maintenance and any other legal income.

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4. The term territory means:

- With respect to the Republic of Kazakhstan, the state territory of the Republic of Kazakhstan, including free economic zones, the continental shelf and subsoil, over which the Republic of Kazakhstan exercises its sovereign rights and jurisdiction in accordance with international law;

Regarding Romania, the Romanian territory, including the territorial sea, as well as the exclusive economic zone over which Romania, in accordance with its legislation and with international law, exercise its sovereign rights and jurisdiction.

## **Article 2. Promotion and Protection of Investments**

1. Each Contracting Party shall encourage investments made on its territory by investors of the other Contracting Party and will authorize these investments in accordance with its legislation.

2. If one Contracting Party has agreed to invest in its territory, it will submit, in accordance with its laws and regulations, the necessary permits related to the investment, including the right to hire management and technical personnel of its choice, regardless of nationality.

## **Article 3. Legal Regime of Investments**

1. Each of the Contracting Parties shall ensure a fair and equitable treatment for investments by investors of the other Contracting Party and shall not prejudice the management, operation, use or disposition of these investments through arbitrary or discriminatory measures.

2. Each of the Contracting Parties shall ensure in its territory with respect to investments a regime no less favorable than that granted to investments of its own investors or investments of investors of third countries.

3. The most-favored-nation treatment granted in accordance with paragraphs 1 and 2 of this Article shall not apply to the advantages that the Contracting Party grants or will provide in the future:

(a) In connection with participation in the free trade zone, customs or economic union;

(b) On the basis of the International Agreement for the Avoidance of Double Taxation or other agreements on taxation matters;

(c) Agreements on cross-border trade

## **Article 4. Expropriation**

1. Investments of investors of one of the Contracting Parties can not be requisitioned, nationalized, expropriated or subjected to other measures having such consequences as requisition, nationalization, expropriation (hereinafter expropriation), except for cases where expropriation is carried out in the public interest and produced:

- In accordance with the procedure established by law;

- without discrimination;

- with payment of immediate, adequate and effective compensation.

2. Compensation should be equal to the real market value of the expropriated investment immediately before the moment of expropriation or before the forthcoming expropriation became known, whichever occurs first.

3. Compensation shall include interest corresponding to the effective interest rate of the National Bank and calculated for the period between the date specified in paragraph 2 of this Article of this Agreement and the date of payment of compensation. Compensation is paid in the currency in which the investment was made, or, with the consent of the investor, in any other currency. Compensation is subject to transfer abroad without restrictions and unnecessary delay.

## **Article 5. Indemnification of Damages**

Investors of one of the Contracting Parties whose investments in the territory of the other Contracting Party have suffered damage as a result of war or other armed conflict, state of emergency, civil strife or similar circumstances are granted a treatment no less favorable than that applied to their investors or third-party investors countries, with compensation for the damage suffered by them as a result of the above circumstances. These amounts are subject to free transfer abroad.

## **Article 6. Transfer of Payments Associated with Investments**

1. The Contracting Parties guarantee that all funds transfers related to investments are made freely and without undue delay in accordance with the procedure established by the legislation of the Contracting Party in the territory of which the investment is made and this procedure may provide for:

- The rules for issuing such transfers, that the right of free transfer is not violated;
- Withholding taxes, fees from transferred amounts;
- Protection of legal rights of creditors or enforcement of decisions made in the course of proceedings.

The procedure referred to in this Article shall be fair and non-discriminatory.

In this Agreement transfers include, in particular, but not exclusively:

- Income, as defined in paragraph 3 of Article 1 of this Agreement;
- Amounts paid in repayment of loans recognized by both Contracting Parties as investments;
- Amounts received by the investor in connection with partial or complete liquidation, or sale of investments;
- Compensation for damage and damages in accordance with Articles 4 and 5 of this Agreement.

2. Transfers will be made without undue delay in freely convertible currency at the rate applicable on the day of transfer, in accordance with the currency legislation.

## **Article 7. Principle of More Favorable Regime**

1. If the laws of any Contracting Party contain a clause that gives investors of the other Contracting Party a more favorable treatment than provided for in this Agreement, this provision, if it has a more favorable treatment, has priority over this Agreement.
2. Each Contracting Party shall comply with any other obligations it has incurred on investments made on its territory or by investors of the other Contracting Party.

## **Article 8. Principle of Subrogation**

If either of the Parties or the appointed body makes payment to one of the national investors according to a financial guarantee concerning noncommercial risks which it has given concerning investments in the territory of Other Party, last Party shall recognize transfer of any right, or the property right, of this investor to the former Party or its appointed body on the basis of a subrogation principle.

## **Article 9. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation and application of the provisions of this Agreement will be resolved through diplomatic channels.
2. If agreement is not reached by the Contracting Parties within six months from the date of the dispute, the dispute shall, at the request of any of the Contracting Parties, be referred to an arbitral tribunal composed of three members. Each of the Contracting Parties shall appoint one arbitrator and the appointed arbitrators shall elect a chairman who will be a citizen of a third State maintaining diplomatic relations with both Contracting Parties.
3. If one of the Contracting Parties does not appoint an arbitrator and agrees with the invitation of the second Contracting Party to bring such an appointment within two months, the arbitrator shall be appointed at the request of that Contracting Party by the President of the International Court of Justice in the city of The Hague.
4. If both arbitrators cannot reach agreement on the election of the chairman within two months from the date of their appointment, he shall be appointed at the request of either of the Contracting Parties by the President of the International Court of Justice.
5. If, in the cases specified in paragraphs 3 and 4 of this article, the President of the International Court of Justice cannot perform this function or if he is a citizen of one of their Contracting Parties, such appointment will be made by the Vice-

President, and, if he cannot fulfill the relevant functions or is a citizen of one of the Contracting Parties, the appointment shall be made by the highest-ranking judge of the International Court of Justice who is not a national of either Contracting Party.

6. Without infringing other decisions between the Contracting Parties, the arbitral tribunal shall establish its own rules of procedure. The arbitral tribunal shall rule by a majority of votes.

7. Each of the Contracting Parties shall bear the cost of maintaining its member of the court, and also in accordance with its share in the arbitration procedure, the expenses for the maintenance of the chairman and other expenses shall be borne by the Contracting Parties in equal parts.

8. The decisions of the court are final and binding on each of the Contracting Parties.

## **Article 10. Settlement of Disputes between a Contracting Party and the Investor of other Party**

1. In order to resolve the dispute between the Contracting Party and the investor of the second Contracting Party in relation to the investment, negotiations will be held between the Parties concerned.

2. If negotiations fail to resolve the dispute within six months from the date of the request for authorization. The parties to the dispute may submit the dispute for resolution:

(a) To the competent court of the Contracting Party in whose territory the investment was made; or

(b) the International Center for the Settlement of Investment Disputes (ICSID) established in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington on March 18, 1965; or

(c) To the Arbitral Tribunal, which, unless otherwise agreed between the parties to the dispute, will be convened in the conditions of arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. Each Party hereby agrees on submitting the investment dispute to the international arbitration.

4. During the arbitration proceedings or the enforcement of the arbitral award, the Contracting Party participating in the dispute shall not raise as an argument that the investor of the other Contracting Party has received partial or full compensation for the damage suffered on the basis of insurance.

## **Article 11. Final Provisions**

1. The Contracting Parties shall exchange notes on the implementation of the legal procedures provided for by the national legislation of each of the Contracting Parties with respect to the entry into force of international agreements. This Agreement shall enter into force 30 days after the date of mutual exchange of notes of the Contracting Parties.

2. This Agreement shall remain in force for 10 (ten) years after its entry into force and shall remain in effect until terminated in accordance with paragraph 6 of this Article.

3. The provisions of this Agreement, from the moment of its entry into force, apply to investments made since December 16, 1991 (Date of the independence of the Republic of Kazakhstan). However, the Agreement will not apply to disputes arising before its entry into force.

4. With respect to those investments that were made before the termination of this Agreement, the provisions of all previous Articles of this Agreement will remain in force for 10 (ten) years from the date of termination.

5. This Agreement may be amended by a written agreement between the Parties. Any amendment shall enter into force if either Party notifies the other Party that it has regulated all its own formalities preventing the entry into force of such an amendment in accordance with the procedure provided for in paragraph 1 of this Article.

6. Each of the Contracting Parties may in writing notify the other Contracting Party one year before the expiration of the validity period on the termination of this Agreement after the first nine years or at any time thereafter. If an official note on the termination of the Agreement is not communicated, the Agreement shall be considered updated.

In witness thereof, we, duly authorized representatives have signed this Agreement.

DONE at Bucharest on April 25, 1996, in two originals, each in the Kazakh, Romanian and Russian languages, all texts being equally authentic.

In the event of any discrepancies in the interpretation of the provisions of this Agreement, the text of the Agreement in Russian will prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN

FOR THE GOVERNMENT OF ROMANIA

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