

# Agreement between the Government of the Italian Republic and the Government of the Republic of Kazakhstan on the Promotion and Protection of Investments

The Government of the Italian Republic and the Government of the Republic of Kazakhstan (hereinafter referred to as the Contracting Parties),

Wishing to create favorable conditions for greater economic cooperation between the two countries, and in particular investment by investors of a Contracting Party in the territory of the other Contracting Party;

Recognizing that the promotion and mutual protection of such investments, in accordance with the International Agreements, will help to stimulate entrepreneurial initiatives that are conducive to the prosperity of the two Contracting Parties, have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

1. "Investment" means any asset invested, either before or after the entry into force of this Agreement, by natural or legal persons of a Contracting Party in the territory of the other Party, in accordance with the laws and regulations of the latter, irrespective of the legal force chosen and the legal order of reference. Without prejudice to this general context, "investment" means in particular but not exclusively:

To . Movable and immovable property, as well as any other right to property in rem, including, as far as is usable for investment, the real rights of collateral on third party property;

B. Equity securities and bonds, quotas of participation and each other title of credit; As well as government bonds and public securities in general;

C. Financial claims or any other right for the service, with economic value, relating to investments, as well as reinvested earnings and capital gains;

D. Copyright, trademarks, patents, industrial designs and other intellectual and industrial property rights, know-how, trade secrets, firm and start-up;

Is . Any law of economic nature conferred by law or by contract, as well as any license and concession granted in accordance with the provisions in force for the exercise of economic activities, including those for prospecting, mining and exploitation of natural resources;

F. Any increase in the value of the original investment.

Any change in the form of the investment made in accordance with the laws and regulations of the Contracting Party on whose territory it is made does not imply a change in its substance.

2. "Investor" means any natural or legal person of a Contracting Party who invests in the territory of the other Contracting Party, as well as affiliated companies, affiliates and foreign affiliates which are in any way controlled by the persons or legal entities mentioned above.

3. For "natural person" with reference to each Contracting Party, any natural person who, by law, is a national of that State.

4. "Legal person" means, with reference to each Contracting Party, any entity having its registered office in the territory of one of them and recognized as public bodies, corporations of persons or of capital, foundations and associations, whether or not The responsibility is limited or not.

5. "Income" means the sums received from an investment, including, in particular, profits or interest, income from interest, capital gains, dividends, royalties or remuneration for assistance, technical services and other obligations, as well as any payment in kind, Such as, but not exclusively, raw materials, products or other products and livestock.

6. "Territory" means, in addition to the land within the land borders, also maritime areas. The latter comprise marine and submarine areas on which the Contracting Parties have sovereignty or exercise, under international law, sovereignty or jurisdiction.

7. "Investment Agreement" means an agreement between a Party (its Agencies or Representatives) and an investor of the other Party regarding an investment.

8. "Non-discriminatory treatment" means treatment that is at least as favorable as the best treatment or treatment of the most favored nation.

9. "Access right" means the right to be allowed to make investments in the territory of the other Contracting Party.

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

1. Each Contracting Party shall encourage investors from the other Contracting Party to make investments in their territory.

2. Investors of one of the Contracting Parties shall have the right to enter into the investment activity in the territory of the other Contracting Party under conditions not less favorable than those accorded under Article 3.1. Article 3.1.

3. The two Contracting Parties shall at all times provide fair and equitable treatment to investors of the other Contracting Party. The two Contracting Parties shall ensure that the management, maintenance, enjoyment, processing, enjoyment or transfer of investments made in its territory by investors of the other Contracting Party and the companies and undertakings in which such investments have been made, Are in no way affected by unjustified or discriminatory measures.

4. Each Contracting Party shall establish and maintain in its territory a legal framework to ensure the continuity of legal treatment, including the fulfillment of all the commitments undertaken by each individual investor, to investors.

## **Article 3. National Treatment and Most Favored Nation Clause**

1. The two Contracting Parties, in their territory, shall accord investment to the investors of the other Contracting Party with a non-less favorable treatment than the one invested in and the income of their nationals or third-country investors.

2. In the event that, under the law of one of the Contracting Parties, or the international commitments in force or which could enter into force for one of the Contracting Parties in the future, there would be a legal framework in which investors of the other Contracting Party To be granted a more favorable treatment than that provided for in this Agreement, the investors of the Contracting Party concerned shall apply the treatment reserved to the investors of those other Parties, including for ongoing relationships.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply to the advantages and privileges that a Contracting Party grants to investors of third countries as a result of its participation in Customs or Economic Unions, a Common Market, An Area of Free Trade, a Regional or Sub-Regional Agreement, an International Multilateral Economic Agreement or Agreements concluded to avoid double taxation or to facilitate cross-border exchanges, points 1 and 2 of this Article shall not Apply to the advantages and privileges that a Contracting Party recognizes to investors of Third Countries as a result of its participation in Customs or Economic Unions, a Common Market, a Free Trade Area, a Regional or Sub-Regional Agreement, To an International Multilateral Economic Agreement or to Agreements concluded to avoid double taxation or to facilitate cross-border trade.

## **Article 4. Compensation for Damage or Loss**

1. Where investors in either of the two Contracting Parties suffer losses or damage to their investments in the territory of the other Contracting Party due to wars, other forms of armed conflict, emergency states, civil wars or other similar events, the Contracting Party In which the investment was made, will provide adequate compensation for such losses or damages, irrespective of whether they are States caused by government forces or other entities. The related payments will be freely transferable without undue delay.

Investors concerned will receive the same treatment as for the citizens of the other Contracting Party and in any case not less favorable than those accorded to third-country investors.

## **Article 5. Nationalization or Expropriation**

1 . Investments covered by this Agreement may not be the subject of measures limiting the right of ownership, possession, control and enjoyment of rights to them, unless specifically provided for by national or local law, and / or by Regulations and judgments issued by competent courts or tribunals.

2 . Investors of one of the Contracting Parties shall not be "de jure" or "de facto" directly or indirectly nationalized, expropriated, subject or subject to measures having similar effects in the territory of the other Contracting Party, except for public or private purposes Reasons of national interest, against immediate, full and effective reparation and provided that such measures are taken on a non-discriminatory basis and in accordance with all provisions and legal procedures.

3 . Compensation will be equivalent to the effective investment value immediately before the date on which the nationalization or expropriation decision was announced to the investor: or made public.

In the absence of an agreement between the host Contracting Party and the investor during the nationalization or expropriation procedure, the compensation shall be calculated on the basis of the same reference parameters and the same exchange rates as are taken into account in the investment documents. The exchange rate applicable to each indemnification shall be that of the day immediately before the nationalization or expropriation was announced or made public.

4 . Without limiting the scope of the preceding paragraph where an object of nationalization, expropriation or similar event is a foreign capital company, the valuation of the investor's share made in the investment currency of not less than the initial value will be added to the increases Of capital and the revaluation of reinvested capital gains and reserve funds, and deducted the value of the reductions or losses of capital.

5 . Compensation will be considered effective if paid in the same currency as the foreign investor has made the investment, to the extent that this currency is - or convertible, or otherwise, in any other currency accepted by the investor.

6 . Compensation will be considered timely if it happens without undue delay, and in any case within a month.

7 . Compensation will include interest calculated on a LIBOR basis at six months starting from the date of nationalization or expropriation until the date of payment.

8 . A citizen or a company of one of the two Contracting Parties who claims that all or part of their investment has been expropriated shall have the right to an immediate examination by the judicial or administrative authorities of the other Party in order to determine whether the expropriation Has taken place and, if so, whether such expropriation and any related compensation are in conformity with the principles of international law and in order to decide on all the other matters connected with it.

9 . In the absence of an agreement between the investor and the competent authority, the amount of compensation shall be determined in accordance with the dispute settlement procedures referred to in Article 9 of this Agreement. Compensation will be freely transferable. Article 9 of this Agreement. Compensation will be freely transferable.

10 . The provisions of paragraph 2 of this Article shall also apply to profits resulting from an investment and, in the event of liquidation, to the proceeds derived from it. Paragraph 2 of this Article shall also apply to profits deriving from an investment and, Of the winding-up, to the proceeds derived from it.

11 . If, after expropriation, the property in question has not been used, in whole or in part, for that purpose, the owner, or those who have the cause, are entitled to repurchase the good at market price.

## **Article 6. Repatriation of Capital, Profits and Salaries**

1 . Each of the Contracting Parties will ensure that the investors of the other can transfer abroad in any convertible currency and without undue delay, the following:

To . Capital and additional capital shares, including reinvested earnings, used to maintain or increase investment;

B. Net income, dividends, royalties, fees for assistance and technical services, interests and other profits;

C. Income from total or partial sale or total or partial liquidation of an investment;

D. Funds for the repayment of loans relating to an investment and the payment of interest thereon;

Is . Remuneration and benefits received by citizens of the other Contracting Party for activities and services carried out in

connection with an investment made in the territory of the other Contracting Party, to the extent and in accordance with the procedures laid down by the applicable national laws and regulations.

2. Without prejudice to the scope of Article 3 of this Agreement, the Contracting Parties undertake to grant the transfers referred to in paragraph 1 of this Article the same preferential treatment reserved to third-country investors, if more favorable. Article 3 This Agreement, the Contracting Parties undertake to grant the transfers referred to in paragraph 1 of this Article the same favorable treatment reserved to third-country investors, whichever is the more favorable.

## **Article 7. Subrogation**

In the event that a Contracting Party or its institution has granted an insurance against non-commercial risks for investments made by its investor in the territory of the other Contracting Party and has made payments under the guarantee granted, the other Contracting Party shall recognize The surrogate of the investor's rights to the first Contracting Party. In the event of a surrogate, as defined above, the investor will not be able to file complaints regarding payments already made unless it is authorized by the Contracting Party or its institution. The provisions of Articles 4, 5 and 6 of this Agreement shall apply to the transfer of payments to be made to the Contracting Party or its establishment by reason of such surrogacy.

## **Article 8. Transfer Mode**

1. The transfers referred to in Articles 4, 5, 6 and 7 shall be made without undue delay, and in any case within six months of the fulfillment of the tax obligations. Such transfers shall be made in a currency convertible to the official exchange rate applied on the date on which the investor requests transfer, with the exception of the provisions of Article 5 (3) concerning the exchange rate applicable in the event of nationalization or expropriation Articles 4, 5, 6 and 7 will be carried out without undue delay, and in any event within six months of the fulfillment of the tax obligations. Such transfers shall be made in a currency convertible to the official exchange rate applied on the date on which the investor requests transfer, with the exception of the provisions of Article 5 (3) concerning the exchange rate applicable in the event of nationalization or expropriation .

2. The tax obligations referred to in the preceding paragraph shall be deemed to have been fulfilled when the investor has performed the procedures provided for by the law of the Contracting Party in whose territory the investment was made.

## **Article 9. Disputes between Investors and Contracting Parties**

1. Controversies arising between a Contracting Party or investors of the other Contracting Party regarding investments, including those on the amount of compensation, shall, as far as possible, be composed in a friendly manner.

2. Where an investor and an entity of one of the Contracting Parties have entered into an investment agreement, the procedure foreseen in that agreement shall apply.

3. If such disputes can not be made amicably within six months from the date of the written request for composition, the interested investor may, at his option, submit:

To . To the Court of the Contracting Party competent for the territory;

B. To an arbitral tribunal ad hoc, in accordance with the Arbitration Rules of the United Nations Commission on International Commercial Law (UNCITRAL), the Host Contracting Party agrees to accept the referral to that arbitration.

C. To the International Center for Dispute Settlement Arrangements for the application of the arbitration procedures provided for in the Washington Convention of 18 March 1965 on the settlement of disputes concerning investments between States and citizens of other States, if or as soon as the Contracting Parties They have joined you.

4. The two Contracting Parties shall refrain from dealing diplomatically with matters relating to an arbitration procedure or ongoing proceedings until such proceedings have been concluded and one of the Contracting Parties has failed to comply with the judgment of the Arbitral Tribunal or the judgment of another Tribunal within The terms prescribed by the judgment in the judgment, or within the limits determined by the law of international or domestic law applicable to the case.

## **Article 10. Rules of Contracts between the Contracting Parties**

1. Controversies arising between the Contracting Parties on the interpretation and application of this Agreement shall, as far as possible, be amicably composed by diplomatic means.

2 . In the event that such disputes can not be made within six months of the date on which one of the Contracting Parties has made a written request to the other Contracting Party, they shall, at the initiative of one of the Contracting Parties, submit to an Arbitral Tribunal Ad hoc in accordance with the provisions of this Article.

3 . The Arbitral Tribunal shall be constituted as follows: within two months from the date of receipt of the request for arbitration, each Contracting Party shall appoint a member of the Tribunal. The Chairman will be appointed within months of the date of appointment of the two members.

4 . If, within the time limit referred to in paragraph 3 of this Article, nominations have not yet been made by each of the two Contracting Parties, in the absence of various arrangements, may apply to the President of the International Court of Justice. If he is a citizen of one of the Contracting Parties, or for whatever reason he is not able to proceed with the nomination, he will be asked to the Vice President of the Court. If the Vice President is a citizen of one of the Contracting Parties or for any reason can not make appointments, he will be invited to provide the member of the International Court of Justice older than a citizen of one of the Contracting Parties. Of this Article, appointments have not yet been made for each of the two Contracting Parties, in the absence of various arrangements, may apply to the President of the International Court of Justice. If he is a citizen of one of the Contracting Parties, or for whatever reason he is not able to proceed with the nomination, he will be asked to the Vice President of the Court. In case the Vice President is a citizen of one of the Contracting Parties, or for whatever reason can not make appointments, he will be invited to provide the member of the International Court of Justice older than a citizen of one of the Contracting Parties.

5 . The Arbitral Tribunal will decide by majority vote and its decisions will be binding. The two Contracting Parties shall bear the costs of their arbitration and those of their representatives at the hearings. The expenses of the President and the remaining expenses shall be borne by the two Contracting Parties equally.

The Arbitral Tribunal will establish its own procedures.

## **Article 11. Relations between Governments**

The provisions of this Agreement shall apply irrespective of the existence or not of diplomatic or consular relations between the Contracting Parties.

## **Article 12. Application of Various Provisions**

1 . If a matter is governed both by this Agreement and by any other International Agreement to which the two Contracting Parties have acceded, or by rules of general international law, the Contracting Parties themselves and their investors shall apply the most favorable provisions.

2 . Where, by virtue of laws and regulations or other provisions or specific contracts, such as authorizations or investment arrangements, a Contracting Party has reserved to investors of the other Contracting Party a more favorable treatment than that provided for in this Agreement, favorable.

In the event that the host Contracting Party has not applied such treatment in accordance with the foregoing, and the investor is consequently harmed, he shall be entitled to compensation for such damages, in accordance with the provisions of Article 4.

3 . Where, after the investment has been made, the laws, regulations, rules or measures of economic policy which directly or indirectly apply to investments may be subject to change, the investor shall, upon the investor's request, apply the same Treatment applicable at the time the investment was made.

## **Article 13. Entry Into Force**

This Agreement shall enter into force on the date on which the two Contracting Parties have been notified of the completion of their respective constitutional procedures.

## **Article 14. Duration of Expiry**

1 . This Agreement shall remain in force for 10 years from the date of notification referred to in Article 13 and shall remain in force for an additional period of five years, unless one of the two Contracting Parties denies it in writing within one year from Article 13. It shall remain in force for an additional period of five years, unless one of the two Contracting Parties denies it in writing within one year of its expiry.

2 . For investments made before the expiry date referred to in paragraph 1 above, the provisions of Articles 1 to 12 shall remain in force for a further period of five years from the above mentioned dates. Point 1, the provisions of Articles 1 to 12 shall remain In force for a further five years from the above mentioned dates.

DONE at Rome on the twenty-first day of September 2000, two copies in duplicate, one in the Italian, one in Kazakhstan and one in the English language, the three texts being equally authentic. In case of divergence, the text will prevail in English.

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC

FOR THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN