

# **Agreement between the Government of the Kyrgyz Republic and the Government of Ukraine on the promotion and mutual protection of investments**

The Kyrgyz Republic and the Government of Ukraine, hereinafter called the Contracting Parties, on the basis of efforts to expand and deepen economic cooperation on a long term basis, in particular, to create favorable conditions for capital investment by investors of one Contracting Party in the territory of the other Contracting Party;

Aware of the need to promotion and mutual protection of investments by investors of both Contracting Parties, with a view to the economic prosperity of both countries, recognizing that the promotion and reciprocal protection of investments will stimulate business initiative and as a result, will make an important contribution to the development of economic ties between the two countries Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" means: all types of financial, material and other property and intellectual property invested by investors of one Contracting Party in various objects of activity in the territory of the other Contracting Party with the aim of making a profit or achieving a social effect, in particular, but not exclusively :

- a) movable and immovable property and any other property rights such as the right to use the property as collateral for debts withholding;
- b) shares, stocks, bonds and debt obligations of organizations and enterprises or property share of these organizations and enterprises;
- c) monetary claims and rights to the fulfillment of contractual obligations that have an economic value;
- d) a freely convertible currency and the currency of serving the state investment;
- e) intellectual property rights, industrial design, including copyright, the right to obtain a patent, the right to a trademark, service mark, trade name, invention, technology and "know-how" and business secrets;
- f) concessions authorized by the legislation of each of the Contracting Parties or bilateral agreements between Ukraine and the Republic of Kyrgyzstan, including exploration, development, extraction or exploitation of natural resources.

2. The term "investment" means:

- a) investments in the territory of Ukraine approved by the Government of Ukraine or its authorized bodies, which are carried out in accordance with the current legislation of Ukraine;
- b) investments in the territory of the Kyrgyz Republic approved by the Government of the Republic of Belarus or its authorized agencies, which are carried out in accordance with the current legislation of the Kyrgyz Republic.

Any change in the form of investment does not affect its classification as "investment", provided that such variation is not contrary to the approved initial form.

3. The term "returns" means the amount of money and property values received from the investment and includes, in particular, but not exclusively, profits, interest, royalties and fees.

4. The term "investor" means:

- a) with regard to Ukraine:

Any natural person who is a citizen of Ukraine, and any legal entity established in accordance with the Constitution and the legislation in force and which has the right to invest in the territory.

b) in respect of the Republic of Kyrgyzstan

Any natural person who is a citizen of the Kyrgyz Republic and any legal entity established in accordance with applicable law and who has the right to invest in the territory.

5. The term "territory" means the national territory of each Contracting Party, as well as the economic zone and the continental shelf over which the Contracting Parties shall in accordance with international law, sovereign rights and jurisdiction in order to preserve natural resources.

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

1. Each Contracting Party shall, in accordance with applicable in the territory of its State legislation, encourage and create favorable conditions for investors of the other Contracting Party to make investments on its territory and provide them with the right to dispose of these investments.

2. Investments of investors of either Contracting Party shall be guaranteed fair treatment, and they shall be safe and protected in the territory of the other Contracting Party.

## **Article 3. Most-favored Nation Treatment**

1. Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall be accorded treatment no less favorable than for investments of investors of any third country.

2. Investors of one Contracting Party who have made their investments in the territory of the other Contracting Party and incur losses due to war or other armed conflict, revolution, the imposition of a state of emergency, insurrection, coup, unrest in the territory of this Contracting Party or other similar actions shall be provided with this Contracting Party conditions for damages, and these conditions must be no less favorable than those provided by this Contracting Party to investors of any third country.

3. The conditions referred to in paragraph 1 of this Article shall not apply to the benefits provided by one Contracting Party to investors of third countries and the resulting:

From existing or future agreements establishing the economic zones, economic or customs unions, free trade areas, other forms of regional cooperation;

From agreements on avoidance of double taxation or other international agreement, completely or partially related to taxation, as well as in the framework of the current legislation on the taxation of State of each Contracting Party.

4. In relation to the investors of either Contracting Party whose investments have suffered losses owing to war or other armed conflict, state of emergency or public disorder, the other Contracting Party shall ensure treatment no less favorable than that which the other Contracting Party shall in respect to investors of any third country with respect to renewal of property, compensation or other settlement related to material values.

## **Article 4. Compensation for Coercive Measures**

1. Neither Contracting Party on its territory shall take coercive measures on its territory, such as nationalization, expropriation or other having similar in effect, in respect of investments made on this territory by an investor in a state of the other Contracting Party, unless the public interest requires it. At the same time, the procedure established by the legislation in force in this territory is followed, and appropriate compensation is paid.

2. Such measures should not be discriminatory.

3. Compensation is calculated based on the actual value of the investment immediately at the moment of the decision or the publication of the decision to adopt the measures referred to in paragraph 1 of this Article, and will be determined in accordance with the principles of an objective assessment, adopted in international practice. Compensation shall be paid in freely convertible currency at the rate, which is recognized as an official in effect on the date of determination of value. The amount of compensation is transferred without undue delay within the time normally required to carry out the formalities relating to its interpretation. Compensation shall include interest calculated from the date of determining the real value of the investments up to the date of payment in accordance with the commercial interest rate determined by the Central Bank

of the Contracting Parties.

4. If a Contracting Party expropriates the funds of a company that is considered to be a company of this Contracting Party in accordance with clause 4 of Article 1 of this Agreement and in which an investor of the other Contracting Party holds shares, the conditions of paragraph 1 of this Article shall apply to ensure compensation to this investor.

5. The investor has the right to verify the legality of the expropriation of the competent authorities of the Contracting Party carried out the expropriation.

6. The investor has the right to the amount and conditions for payment of compensation, after a review by the competent authorities of the Contracting Party carried out the expropriation or by an international court of arbitration in accordance with Article 7 of this Agreement.

## **Article 5. Transfer of Payments, Revenue and Transfer of Movable Property In Connection with Investments**

1. Each of the Contracting Parties in accordance with their laws, regulations and administrative practices guarantee the free transfer, in freely convertible currency of payments and revenues in connection with the investment, on terms no less favorable than investors of any third country, in particular, but not exclusively:

a) net income, dividends, fees for technical assistance and services, interest income and other cash flows resulting from investments;

b) the funds owed to the investor as a result of total or partial liquidation of investments;

c) the cash amounts in repayment of loans recognized as investments;

d) wages and other incomes of the investor's country nationals to work in the territory of the host country in connection with an investment;

d) moving the movable property in connection with the investment.

2. The exchange rate set forth in accordance with the laws of the states of each of the Contracting Parties at the time of the exchange is taken as the exchange rate for covering the payments referred to in paragraph 1 of this Article.

3. Exchange rates are determined in accordance with the listing on the relevant stock exchanges on the territory of either Contracting Party or if there are none on the basis of quotations of first-class banks operating in the territory of each Contracting Party. Bank charges must be fair to both sides.

4. When one of the Contracting Parties or the body authorized by it makes payments to its investor under the guarantee of the investment in the territory of the other Contracting Party, the other Contracting Party shall, without prejudice to the rights of the investor of the first Contracting Party under Article 7 of this Agreement and the rights of the former Contracting Party in accordance with Article 8 of this Agreement, recognize the transfer of the first Contracting Party of all the rights and claims of the investor, implementation in accordance with applicable law. The latter Contracting Party shall also recognize the right to exercise to the same extent as its predecessor on the right of ownership. With regard to the transfer of payments to the Contracting Party concerned in a transfer of rights, Article 4 and Article 5 of this Agreement shall apply *mutatis mutandis*.

## **Article 6. Application of International Treaties**

1. If the rules of the legislation of either Contracting Party or international obligations existing at the moment, or arising in the future include a rule providing investments by investors of the other Contracting Party treatment more favorable than that provided for by this Agreement, such rule shall apply to the extent in which it provides more favorable conditions.

2. Each Contracting Party shall observe any contractual obligation it has assumed in respect of an investor of the other Contracting Party.

## **Article 7. Settlement of Disputes between a Contracting Party and an Investor**

1. If a dispute arises between one Contracting Party and the investor of any other Contracting Party on:

a) the obligations arising from a Contracting Party in respect of an investor of the other Contracting Party regarding an investment of an investor;

b) The breach of any of the rights specified in this Agreement or arising out of it for investment of an investor;

Disputes are resolved as far as possible through mutual consultations and negotiations.

2. If within six months from the date of the written request disputing parties fail to reach a mutual agreement, the dispute shall at the request of one of the Parties may be submitted for resolution:

a) in the courts of the Contracting Parties in accordance with their competence;

b) International Centre for Settlement of Investment Disputes ("the Centre"), taking into account the appropriate provisions contained in the Washington, DC March 18, 1965 Convention on the Settlement of Disputes between States and Nationals of Other States on the investment, if the States of both Contracting Parties are parties this Convention;

c) to international ad hoc arbitration, in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law.

3. Notwithstanding the provisions of paragraph 2 of this Article relating to the submission of the dispute to the arbitration court, the investor has the right to choose the conciliation procedure.

4. The Contracting Parties recognize the decision of the arbitral tribunal and ensure its execution in accordance with the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.

## **Article 8. Settlement of Disputes between the Contracting Parties**

1. Any disputes arising between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled through consultations and negotiations through diplomatic channels.

2. In case of failure to resolve the dispute between the Contracting Parties within six months after it began, at the request of one of its authorization should be referred to the Contracting Parties to the arbitration court.

3. Such an arbitral tribunal shall be constituted for each individual case in the following order. Within two months after receiving the request for arbitration, each Contracting Party shall appoint one arbitrator. These two arbitrators shall elect a citizen and then a third country maintains diplomatic relations with both Contracting Parties who, with the consent of the two Contracting Parties shall be appointed Chairman of the arbitral tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members of the Arbitral Tribunal.

4. If specified in paragraph 3 of this Article the necessary appointments terms will not be made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a citizen of either Contracting Party or if he can not, for whatever reason, to perform the said function, then make the necessary appointments should be invited, Vice-President of the International Court. If the Vice-President is a national of either Contracting Party or if he, too, can not perform these functions, then make the appointments proposed for the next in seniority member of the International Court of Justice who is not a national of either Contracting Party and can no obstacles to fulfill specified function.

5. The arbitral tribunal determines its rules of procedure and decide by a majority vote. The arbitration award shall be binding upon both Contracting Parties. The Contracting Parties shall bear the costs of the arbitrators and the Chairman in equal shares. The arbitral tribunal may, however, in its decision to determine that one of the Contracting Parties shall bear a larger share of spending, and that decision is binding on both Contracting Parties.

## **Article 9. Subrogation**

If a Contracting Party or its competent authority on the basis of a guarantee issued in respect of any of its investments investor pays compensation to the investor, this Contracting Party or its competent authority acquires corresponding rights of the former investor in the line of succession, based on this Agreement.

## **Article 10. Application of the Agreement**

1. This Agreement shall apply to all investments made in accordance with the law of the State within whose territory the investment.

2. Subject to the provisions of paragraph 1 of this Article, this Agreement shall apply to all investments made by investors of the State of one Contracting Party in the territory of the other Contracting Party before or after the entry into force of this Agreement.

3. This Agreement may be updated and supplemented by agreement of the Contracting Parties.

## **Article 11. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force thirty days after the Contracting Parties have notified each other through diplomatic channels of the completion of relevant procedures necessary for the entry into force of this Agreement.

2. This Agreement is concluded for a 10-year term and shall remain in force after the expiration of this period, if its action is terminated in accordance with the procedure set out in paragraph 3 of this Article.

3. For the termination of this Agreement, any Contracting Party not later than one (1) year prior to the expiration of the first 10-year period or at any time after the expiry of this period, send a written notice to the other Contracting Party of denunciation of this Agreement.

4. In respect of investments made prior to the termination of this Agreement shall still apply Articles 1-10 of this Agreement within 10 (ten) years after the termination of the Agreement.

Done in Bishkek on February 23, 1993 in two originals, in Russian, that have the same effect.

For the Government of Ukraine

/signature/

For the Government of the Republic of Kyrgyzstan

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