

# **AGREEMENT**

## **BETWEEN THE GOVERNMENT OF THE REPUBLIC OF BELARUS AND THE GOVERNMENT**

### **Kyrgyz Republic on promotion and mutual protection of investments \*)**

**\*) Entered into force on November 11, 2001**

The Government of the Republic of Belarus and the Government of the Kyrgyz Republic, hereinafter referred to as "Contracting Parties", desiring to intensify economic cooperation for the mutual benefit of both countries,

Desiring to create favorable conditions for increasing investments of investors of one State in the territory of another State, Conscious that the promotion and reciprocal protection of investments in accordance with the international treaty will contribute to the development of business initiatives and prosperity in both countries, have agreed as follows:

#### **Article 1.**

Define

For the purposes of this Agreement, the following terms shall have the following meanings:

1. "Investor" means:

With respect to the Republic of Belarus:

- a) natural persons who, in accordance with the legislation of the Republic of Belarus are the citizens of the Republic of Belarus and who are investing in the territory of the Kyrgyz Republic;
- b) legal entities, including enterprises, economic associations and other associations or organizations adequately established or incorporated under the laws of the Republic of Belarus, who have their location, as well as carry out the actual economic activities in the territory of the Republic of Belarus and who are investing in the territory of the Kyrgyz Republic.

In respect of the Kyrgyz Republic:

- a) natural persons who, in accordance with the legislation of the Kyrgyz Republic are citizens of the Kyrgyz Republic and who invest in the territory of the Republic of Belarus;
- b) legal entities, duly established or incorporated under the laws of the Kyrgyz Republic which have their location, as well as carry out the actual economic activities in the territory of the Kyrgyz Republic and who invest in the territory of the Republic of Belarus.

2. "Investment" means any property that is owned by a natural or legal person of one Contracting Party who invest in the territory of the other Contracting Party in accordance with the legislation of the latter Contracting Party and includes, in particular, but not exclusively:

- a) movable and immovable property and any other property rights such as mortgage, lien, pledge;
- b) stocks, shares, bonds and any other form of participation in legal entities;

- c) claims in respect of money or any performance obligations under the contract, which have any economic value;
- d) intellectual property rights, including goodwill (goodwill), copyrights, patents, trademarks, industrial designs, processes, trade names and know-how;
- e) The right to engage in economic activities, including the rights to exploration, extraction or exploitation of natural resources, as well as all other rights granted by law, agreements or decision of the competent authority in accordance with the law.

Any change in the form in which assets are invested does not affect its character as an investment; and the term "investment" includes all investments, regardless of when they were carried out in accordance with Article 12 of the Agreement - before or after the entry into force of this Agreement.

- 3. "Proceeds" means the amount obtained by any of investments, and in particular, though not exclusively, includes profits, interest, dividends, payments of royalties and other fees of a similar nature.
- 4. "Legislation" in respect of any Contracting Party means the law of the State of the Contracting Parties.
- 5. "Territory" means the territory of the State in which that State exercises sovereign rights or jurisdiction in which it is in accordance with international law.
- 6. "requisition" means the alienation of the authorities of either Contracting Party of the investor or investment of the other Contracting Party in the state or public interests, and in the sense of this Agreement shall not be regarded as a sanction for violation of the law.

## **Article 2. Facilitation of Implementation and Protection of Investments**

- 1. Each Contracting Party shall facilitate and create favorable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its legislation.
- 2. Investments of investors of either Contracting Party shall always be given fair and equitable treatment and full and unconditional legal protection on the territory of the other Contracting Party in accordance with this Agreement. Each Contracting Party shall not prevent the adoption by unreasonable or discriminatory measures the management, maintenance, use or disposal of investments in its territory by investors of the other Contracting Party. Each Contracting Party shall comply with any commitment made with respect to investments by investors of the other Contracting Party.

## **Article 3. Investment Mode**

- 1. Each Contracting Party shall accord in its territory to investments and returns of investors of the other Contracting Party treatment no less favorable than that which it accords to investments and revenues of its own investors or to investments and returns of investors of any third state.
- 2. Each Contracting Party shall provide in its territory to investors of the other Contracting Party that  
  
As for the management, maintenance, use or disposal of their investments treatment no less favorable than that it accords to its own investors or investors of any third state.
- 3. Mode, provided the above paragraphs 1 and 2 shall apply to the provisions of Articles 1-11 of this Agreement.

## **Article 4. Exceptions**

- 1. The provisions of this Agreement regarding the provision of treatment no less favorable than that accorded to its own investors or investors of any third State 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, arising from:
  - a) any existing or possible future free trade agreement, a customs or economic union or a similar regional organization to which is or may become in the future one of the Contracting Parties, or
  - b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation on these issues.

## **Article 5. Indemnification**

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, revolution, state of emergency, revolt, insurrection or riots in the territory of the other Contracting Party, another Contracting Party shall be accorded treatment no less favorable than that which the other Contracting Party to its own investors or investors of any third state in regard to the recovery of damages, compensation or other settlement.

2. Without prejudice to paragraph 1 of this Article investors of one of the

Contracting Parties that are in any of the situations referred to in this paragraph shall be in the territory of the other Contracting Party losses resulting from:

- a) requisitioning of their property or the last forces authorities; or
- b) destruction of their property or the forces of the last government, despite the fact that it was not caused by the necessity of the situation,

Provided the latter Contracting Party restitution or compensation which in either case will be prompt, adequate and effective. Due in this regard, payments can be transferred without restriction.

## **Article 6. Requisition and Compensation**

Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be subject to requisition,

Nationalization, expropriation or other measures, the effect of which is equivalent to the requisition (hereinafter - requisition), except in the public interest, in accordance with legislation on

Non-discriminatory basis and in providing timely, adequate and effective compensation. This compensation is the market value of requisitioned investments immediately prior to the implementation of the requisition shall be paid within three months in the currency in which the investment was originally made, it must be effectively realizable and can be transferred without restriction. An investor who has suffered damages, shall be entitled, in accordance with the law of the Contracting Party carrying out the seizure, on the prompt consideration of the case and analysis evaluation of the relevant investment according to the principles set out in this paragraph, judicial or other independent plenipotentiary authority of that Contracting Party.

## **Article 7. Free Translation**

1. Each Contracting Party shall guarantee investors of the other Contracting Party after the payment of their respective taxes and duties free transfer of payments related to investments of investors of the other Contracting Parties, in particular:

- a) income as defined in paragraph 3 of Article 1 of this Agreement;
- b) payments in repayment of loans, recognized by both Contracting Parties as investments;
- c) payments, intended to cover costs related to the management of investments;
- d) additional contributions required to maintain or expand the investment;
- d) proceeds from the sale or partial or complete liquidation of the investment, including possible increment values;
- e) compensation provided for by Articles 5 and 6 of this Agreement.

2. Transfers will be carried out without delay to the currency in which the investment was originally made, or in any other convertible currency agreed between the investor and the Contracting Party. If an investor has otherwise agreed, the translation will be carried out according to the current on the date of transfer the exchange rate according to the current legislation of the Contracting Parties on currency regulation.

## **Article 8. Subrogation**

In the event that either Contracting Party has granted any financial guarantee against non-commercial risks in respect of investments made by one of its investors in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party on the basis of the principle of subrogation rights of the investor, if the first Contracting Party It made payments under this warranty.

## **Article 9. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. For the purposes of resolving disputes relating to investments between one Contracting Party and an investor of the other Contracting Party and without prejudice to the content of Article 10 of this Agreement ("Disputes between the Contracting Parties") will be consulted in the dispute between the parties to resolve it friendly

Method.

2. If these consultations do not lead to resolution of the dispute within six months from the date of submission of the application for settlement of the dispute, the investor has the right to submit the dispute for resolution of their choice:

a) the competent court of the Contracting Party in whose territory the investment has been made; or

b) the International Centre for Settlement of Investment Disputes (taking into account the relevant provisions where they can be applied, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature March 18, 1965 in Washington, DC, as well as an additional body of the reconciliation, arbitration and to clarify the circumstances of the case); or

c) the arbitration court "ad hoc", which, if the parties to the dispute agree otherwise, shall be established and act in accordance with the arbitration rules of the United Nations Commission on International Trade Law.

3. Each Contracting Party hereby consents to the transfer of an investment dispute to international arbitration of.

4. A Contracting Party party to the dispute, will not be in the arbitral proceedings or execution of the decision of the arbitral tribunal to refer to defend its sovereignty, or the fact that the investor of the other Contracting Party has received under the contract of insurance compensation covering the whole or in part suffered lesion.

5. Neither of the Contracting Parties should not attempt to resolve through diplomatic channels a dispute submitted to arbitration before the International Centre for Settlement of Investment Disputes, except in cases when the other Contracting Party does not submit to the decision of the arbitral tribunal.

## **Article 10. Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled through diplomatic channels.

2. If the Contracting Parties fail to reach an agreement within twelve months after the dispute has arisen between them, the dispute shall be referred, at the request of either Contracting Party to an arbitration tribunal consisting of three members.

Each Contracting Party shall appoint one arbitrator and these two arbitrators shall elect a chairman of the court, which must be a citizen of a third State.

3. If one of the Contracting Parties has not appointed its arbitrator and has not

Responded to the invitation of the other Contracting Party to make such appointment within two months, the arbitrator shall be appointed at the request of the latter Contracting Party Chairman

International Court of Justice.

4. If both arbitrators can not reach an agreement about the choice

Chairman of the tribunal within two months of their appointment, the Chief Justice shall be appointed at the request of any of

Contracting Parties to the President of the International Court.

5. If, in the cases provided for in paragraphs 3 and 4 of this Article, the President of the International Court can not perform the said function or if he is a citizen of either Contracting Party, the appointment shall be made Vice-Chairman, if the latter is also unable to do so or he is a citizen of either Contracting Party, the appointment shall be made the next most senior member of the International Court of Justice who is not a national of either Contracting Party. Appointment of chairman of the court shall be held within three months from the date of referral to the International Court of Justice.

6. A tribunal established under this article shall take decisions by majority vote. These decisions are final and binding on

both Contracting Parties. Each Contracting Party shall bear the costs of its appointed member of the tribunal and the costs associated with its participation in the arbitration proceedings; president of the court costs associated with its participation in the arbitration proceedings, and costs related to the consideration of the dispute, which will be divided equally between the Contracting Parties. The Court itself defines the rules of their work.

## **Article 11. Applicability of other Regulations**

If the domestic legislation of one Contracting Party or existing or subsequently agreed in addition to this Agreement between the Contracting Parties obligations under international law contain a general or special rules, according to which the investments of investors of the other Contracting Party shall enjoy more favorable treatment than that which is established by the present Agreement, these rules shall prevail in relation to this Agreement to the extent and to the extent to which, and because they are more favorable.

## **Article 12. Investments Made Prior to the Entry Into Force of this Agreement**

This Agreement shall also apply to investments that are invested in the territory of the other Contracting Party and investors made in accordance with the legislation of the other Contracting Party prior to the entry into force of this Agreement.

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

The Contracting Parties shall notify each other in writing of the fulfillment of domestic procedures necessary for the entry into force of this Agreement. This Agreement shall enter into force thirty days after the date of receipt of the last of the two above-mentioned notices.

## **Article 14. Term and Termination**

1. This Agreement is concluded for a period of ten years. This Agreement shall be extended for another period of ten years, unless either Contracting Party notifies in writing the other Contracting Party at least twelve months prior to the expiry of the period of its intention to terminate this Agreement.
2. At the same time in respect of investments made prior to the termination of this Agreement, the provisions of Articles 1-12, relating to such investments, will remain in force for a period of ten years from the date of termination of this Agreement.

In witness whereof the representatives duly authorized by their respective Governments, have signed this Agreement.

Done in duplicate at Minsk on 30 March 1999 in the Belarusian, Kyrgyz and Russian languages, all texts being equally authentic and have equal legal force. In case of divergence of interpretation of this Agreement will be given to the text in Russian.