

[TRANSLATION – TRADUCTION]

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

The Government of the Republic of Kazakhstan and the Government of the Republic of Uzbekistan hereinafter referred to as “the Contracting Parties”,

Desiring to facilitate wider long-term economic cooperation between them for the mutual benefit of both States,

Recognizing the need to promote and protect investments in order to create and maintain favourable investment conditions for investors from the State of one Contracting Party in the State territory of the other Contracting Party,

Agreeing that a stable basis for investments shall ensure the most effective use of economic resources and the development of productive forces,

Have agreed as follows:

Article 1. General Definitions

1. “Investor” applies to and includes:
 - (a) Juridical persons from the States of the Contracting Parties;
 - (b) Nationals, public associations and non-nationals of the States of the Contracting Parties.
2. “Investments” means any kind of property and the rights thereto, and also intellectual property rights invested by the investors of one Contracting Party in the territory of the other Contracting Party for the purposes of obtaining a profit (return) and in particular, though not exclusively, includes:
 - (a) Movable and immovable property and associated property rights;
 - (b) Monetary resources, shares, stocks and other securities and any forms of participation in companies, joint stock companies, business partnerships, associations and other juridical persons registered under the law of each of the Contracting Parties;
 - (c) Monetary claims and other rights having an economic value related to investments;
 - (d) Copyrights, intellectual and industrial property rights such as inventions, patents, industrial projects and designs, trademarks, trade names, origin indicators, technology, know-how and others;
 - (e) Rights to own and use land (including on the basis of a lease) and natural resources.

3. A change in the form of investments, which is carried out in accordance with the State law of the Contracting Party where the investments were made, shall not affect their character as investments.

4. “Juridical persons” means any juridical person constituted under the State law of one Contracting Party and making investments in the State territory of the other Contracting Party.

5. “Nationals” means persons with citizenship and legal capacity under the State law of one Contracting Party who live permanently in its territory, or abroad, and who make investments in the State territory of the other Contracting Party.

6. “Non-nationals” means persons without citizenship who live permanently in the State territory of one Contracting Party, are registered under the State law of that Contracting Party to conduct entrepreneurial activities, and make investments in the State territory of the other Contracting Party.

7. “Returns” means, although not exclusively, funds yielded by investments, as defined in paragraph 2 of this article, in the form of profits, interest, dividends, royalties, licensing and commission fees, payments for technical assistance, technical service and other forms of remuneration.

8. “Territory” means the State territory of the Contracting Party, over which it exercises, in accordance with the rules of international law, its sovereign rights and jurisdiction.

Article 2. Promotion and protection of investments

1. Each Contracting Party shall, in accordance with its State law, admit and encourage in its State territory investments by investors from the State of the other Contracting Party and shall guarantee to these investments full and unconditional legal rights.

2. Under its State law, each Contracting Party shall support various forms of mutual investments, shall protect them in its State territory and shall not interfere with the functioning, use and disposal of these investments through arbitrary management measures.

3. If, under this Agreement, a Contracting Party has admitted investments to its State territory, that Contracting Party shall, in accordance with its State law, issue the necessary authorization related to such investments to the investors from the State of the other Contracting Party.

Article 3. National treatment and most-favoured-nation provisions

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

2. In respect of investments by investors from the State of the other Contracting Party, each Contracting Party shall observe any obligations arising from the national legislation of the other Contracting Party and from this Agreement.

3. The provisions of this Agreement in respect of the principle of most-favoured-nation shall not be construed so as to oblige one Contracting Party to extend to investors from the State of the other Contracting Party favourable treatment or privileges arising from:

- (a) Existing or possible future customs, currency and payment unions, free trade areas, single tariff areas, common markets or any other forms of regional economic integration agreements to which one of the Contracting Parties is or may become a party;
- (b) Agreements for the avoidance of double taxation or other international agreements relating to taxation.

Article 4. Application of other rules

If the provisions of the State law of either Contracting Party or obligations under international law existing at present or established hereafter in addition to this Agreement contain provisions, whether general or specific, entitling investments by investors from the State of the other Contracting Party to a treatment more favourable than that provided for by this Agreement, such provisions shall to the extent that they are more favourable prevail over this Agreement.

Article 5. Transfers

1. A Contracting Party in whose State territory investments were made by investors from the State of the other Contracting Party, following the payment by these investors of the respective taxes, duties and charges, shall ensure the unhindered transfer of payments related to these investments and, in particular, but not exclusively:

- (a) Interest, dividends, profits and other current returns, as defined in article 1, paragraph 7, of this Agreement;
- (b) Funds in repayment of loans recognized by both Contracting Parties as investments;
- (c) Licensing proceeds and other payments originating from the rights provided for in article 1, paragraph 2, of this Agreement;
- (d) Capital sums and additional funds necessary for the maintenance, development and management of investments made in the State territory of the other Contracting Party;
- (e) Proceeds from the alienation and the partial or total liquidation of investments, including from capital gains;
- (f) Earnings received by citizens of the State of a Contracting Party in connection with investments made in the State territory of the other Contracting Party;
- (g) Compensation owed pursuant to the articles of this Agreement and other payments relating to any investment disputes within the framework of this Agreement.

2. Transfers shall be made without undue delay in the currency in which the investments were made, or in freely convertible currency at the rate effective on the day of the transfer, and in accordance with the procedure provided for by the State law of the Contracting Party in whose territory the investments were made.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this article, a Contracting Party may restrict a transfer on fair and non-discriminatory conditions by applying its State law in cases involving:

- (a) Bankruptcy, insolvency or the protection of creditors' rights;
- (b) Criminal or administrative offences;
- (c) Discrepancies with the procedure or with the decisions of court proceedings.

4. Returns and other funds indicated in this article, in any currency and received by investors from the State of one Contracting Party as a result of investments made in the State territory of the other Contracting Party from sources where the investment was made may be reinvested or used for other purposes in the State territory of the latter Contracting Party, in accordance with its legislation.

5. The import and export of currency from States of Contracting Parties and other State currencies, payment documents and securities shall be regulated by the law of the State of the Contracting Party where the investments were made.

Article 6. Deprivation and restriction of property rights and compensation for losses

1. The Contracting Parties shall not directly or indirectly take actions to expropriate or nationalize investments belonging to investors from the State of the other Contracting Party, or other actions having the same nature or equivalent consequences, unless these are related to:

- (a) Measures taken in the public interest and applied in accordance with the law;
- (b) Measures of a non-discriminatory character.

2. A Contracting Party that has expropriated investments as a result of the circumstances provided for in paragraphs 1 (a) and (b) of this article shall accord investors from the State of the other Contracting Party fair and effective compensation.

Such compensation shall amount to the market value of the expropriated investments determined immediately before the expropriation, or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest on the value of the expropriated investments, calculated from the date of expropriation at the six-month deposit London Inter-Bank Offered Rate (LIBOR) plus 0 per cent, and shall be freely transferable. The amount of compensation shall be established in the currency in which the investments were made, or in a freely convertible currency, and shall be paid to investors without undue delay, irrespective of their location or residence. A transfer shall be deemed to be made "without undue delay" if effected within the time normally required for the completion of transfer formalities. The calculation of this period shall begin from the date on which the application is submitted and may not exceed three months.

3. Investors from the State of one Contracting Party whose investments suffer losses owing to war or other armed conflict, revolution, a state of national emergency, coup d'état, civil unrest or other similar situations occurring in the State territory of the other Contracting Party shall be accorded compensation, restitution or other financial indemnification for losses on conditions no less favourable than those accorded to the latter Contracting Party's own investors or to investors of a third State.

4. The investors from the State of one Contracting Party are entitled to compensation for losses, including loss of profit, incurred by their investments in the State territory of the other Contracting Party as a result of actions of State bodies or officials of that Contracting Party contrary to the law of the State where the investment was made, and owing to the improper exercise by such bodies or officials of their responsibilities under the law vis-à-vis investors or companies from the State of the first Contracting Party relating to these investments.

Article 7. Subrogation

1. If a Contracting Party or its designated agencies have provided any financial guarantees against non-commercial risks in respect of investments by its investors in the State territory of the other Contracting Party, and have made a payment under such guarantees, by virtue of the principle of subrogation the other Contracting Party shall fully recognize the transfer of rights, including rights of claim, from these investors to the first Contracting Party or its designated agencies, with reservations in respect of the obligations of these investors towards investments insured in this way.

2. In the event of subrogation, as defined in paragraph 1 of this article, investors shall not make claims unless they are authorized to do so by the Contracting Party or its designated agency.

3. A Contracting Party which is a party to a dispute with an investor from the State of the other Contracting Party shall not, during the process of settling the dispute or reaching decisions on the dispute, refer as a defence to its immunity or to the receipt by the investor of compensation owed under insurance contracts which do not stipulate that guarantees are to be provided by the latter Contracting Party or its designated agencies and covering the whole or part of the incurred damage or loss.

Article 8. Consultations

Each Contracting Party may propose to the other Contracting Party that consultations be held for any reason connected with the interpretation or application of this Agreement. The other Contracting Party shall give sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

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 shall be settled through diplomatic channels by means of negotiations and consultations.

2. If an agreement cannot be reached by the Contracting Parties within six (6) months of the date on which the dispute arose, the dispute shall, upon the request of either Contracting Party, be referred for consideration by an arbitration tribunal comprising three members. Each Contracting Party shall appoint one arbitrator and the appointed arbitrators shall select a chair, who shall be a national of a third State maintaining diplomatic relations with the States of both Contracting Parties.

3. If one of the Contracting Parties does not appoint its arbitrator or agree with the invitation from the second Contracting Party to make such an appointment within two (2) months, the latter Contracting Party may invite the President of the International Court of Justice to make the necessary appointment.

4. If neither arbitrator can reach an agreement on the selection of a chair within two (2) months from their appointments either Contracting Party may invite the President of the International Court of Justice to make the necessary appointment.

5. If under the cases specified in paragraphs 3 and 4 of this article the President of the International Court of the United Nations cannot discharge the said functions or if he is a national of one of the Contracting Parties, the appointment shall be made by the member of the International Court of Justice next in seniority who is not a national of either of the Contracting Parties.

6. Before the tribunal makes its decision, it may at any stage of its work propose to the Contracting Parties that they settle their dispute amicably. The foregoing provisions shall not hinder the settlement of the dispute, if the Contracting Parties so decide.

7. The tribunal shall establish its procedural rules without disturbing other arrangements between the Contracting Parties. The tribunal shall reach its decisions by a majority of votes.

8. Each Contracting Party shall bear the maintenance costs for its member of the tribunal, in accordance with its share in the arbitration proceedings. The maintenance costs for the chair of the arbitration tribunal and other costs shall be borne by the Contracting Parties in equal parts. In its decision the tribunal may however allocate a higher participation in the costs to one of the Contracting Parties, and this decision shall be binding on both Contracting Parties.

9. The decisions of the tribunal are final and binding on both Contracting Parties.

Article 10. Settlement of disputes between the Contracting Party and the investor of the other Contracting Party

Each Contracting Party hereby agrees that any legal dispute arising between one of the Contracting Parties and an investor from the State of the other Contracting Party in relation to investments made by him or her in the State territory of the first Contracting Party shall be submitted for consideration to one of the following organizations:

- (a) International Court of Justice of the United Nations;
- (b) Ad hoc arbitration tribunal established in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);
- (c) International Centre for Settlement of Investment Disputes, if both Contracting Parties are parties to the Convention on the Settlement of Investment Disputes

between States and Nationals of Other States, opened for signature on 18 March 1965 in Washington.

Article 11. Applicable laws

1. Unless otherwise provided in this Agreement, all investments under this Agreement shall be regulated by the law in force in the State territory of the Contracting Party in which the investments were made.

2. Notwithstanding the provisions in paragraph 1 of this article, the Contracting Parties may adopt measures directed towards the protection of their vital interests and the maintenance of national security, which shall be implemented under their laws on a non-discriminatory basis.

Article 12. Application of the Agreement

This Agreement shall apply to investments in the State territory of one Contracting Party which were carried out in accordance with its legislation by investors from the State of the other Contracting Party, regardless of whether they were made before or after the date on which this Agreement entered into force.

Article 13. Amendments and additions

Amendments and additions may be introduced to this Agreement upon the written agreement of the Contracting Parties.

Article 14. Entry into force, duration and termination of the Agreement

1. The Contracting Parties shall exchange letters notifying each other of the implementation of the legal procedures under the national laws of the States of each Contracting Party in respect of the entry into force of this Agreement.

The date of entry into force of this Agreement is the date of receipt of the final letter.

2. This Agreement shall remain in force for a period of ten (10) years. It shall be automatically extended for further periods of five (5) years if neither Contracting Party notifies the other Contracting Party in writing, twelve (12) months before the respective date of expiration, of its intention to terminate the force of this Agreement.

3. In the event of the denunciation of this Agreement, its provisions in articles 1-12 shall remain in force for a further period of ten (10) years in respect of investments made before it was terminated.

Done in duplicate in the city of Almaty on this the second day of June 1997 in the Kazakh, Uzbek and Russian languages, all texts being equally authentic.

For the purposes of interpretation, the Russian text of this Agreement shall be used.

For the Government of the Republic of Kazakhstan:
A. ESIMOV

For the Government of the Republic of Uzbekistan:
I. JURABEKOV