

Convention on the Protection of the Rights of the Investor [English Translation]

The States participants in this Convention hereinafter called the Parties,
considering the effective protection of the rights of the investor the required condition for the development of economies of the Parties,
assisting in attraction of investments into the national economies of the Parties,
being guided by the Treaty on Creation of the Economic Union of September 24, 1993,
in development of the Agreement on Co-operation in the Sphere of Investment Activities of December 24, 1993,
striving to the creation of the joint investment space and a co-ordinated approach to the issues connected with the attraction of investments,

HAVE AGREED UPON THE FOLLOWING:

Part I. GENERAL PROVISIONS

Article 1. Basic terms

The following terms are used for the purposes of this Convention:

the investor shall mean the state, legal or physical person investing their own, borrowed or attracted resources in the form of investments;

the investments shall mean financial and material resources invested by the investor into different objects of activities as well as transferred rights to property and intellectual property for the purpose of obtaining profit (income) or achieving a social effect if they are not withdrawn from circulation or are not limited in circulation in accordance with the national legislation of the Parties;

the country of origin of investment shall mean the state in whose territory is registered the investor who is a legal entity or whose citizen is the investor who is a physical person;

the recipient country is the state in whose territory is located the object of investment;

the proprietary right shall mean the right of possession, use and disposal of property.

Article 2. Sphere of application of the Convention

This Convention shall define the legal principles for making of different types of investments registered in the territory of the Parties and guarantees of the right of investors for making of investments and for incomes obtained from them.

The norms and rules defined by this Convention shall be applied in case when the process of investment involves subjects of legal relations of two or more states.

Regulation of issues connected with activities of the investor and protection of his rights shall be performed by authorised state bodies of the recipient country.

Functions for co-ordination of issues connected with the application of this Convention on the part of the bodies of the Commonwealth of Independent States shall be performed by the Inter-state Economic Committee of the Economic Union (hereinafter the IEC).

Article 3. Investors

Investors may be states or legal and physical persons both of the Parties and of third countries, unless the national legislation of the Parties stipulates otherwise.

Article 4. Forms of implementation of investments

The investor shall have the right to make investments by any methods that are not prohibited by legislation of the recipient country.

The Party being the recipient country shall have the right to make expertise of investment projects as regards observance of ecological, antimonopoly and other requirements.

Article 5. Legal treatment for implementation of investments and guarantees against alteration of legislation

Conditions for implementation of investments as well as the legal treatment for activities of investors in connection with implementation of investments may not be less favourable than the conditions for implementation of investments and the treatment of activities connected with them for legal and physical persons of the recipient country with the exception of exclusions that may be established by the national legislation of the recipient country.

The Parties shall have the right to revise the list of exclusions. In such cases they shall inform the IEC about these changes.

The Parties shall have the right to determine lists of priorities in relation to industries, types of activities and regions for which more favourable conditions for investment attraction are introduced.

In case if, after this Convention comes into force, the Parties will change legislative norms concerning investments that will, in opinion of one or several Parties concerned, worsen the conditions and the treatment of investment activities, this issue may be brought for consideration of the Economic Court of the Commonwealth of Independent States and/or other international courts of justice or international courts of arbitration.

If the said courts make a decision confirming the fact of worsening of conditions and treatment for investment activities, the validity of the mentioned legislative norms shall be suspended from the time of their passing (that is, such conditions and treatment shall be preserved as if these norms had not been passed) and shall be resumed from the time of expiration of a five-year period from the date of making the decision on condition and in the part that do not contradict this Convention. This provision does not cover a change of the legislation concerning defence, national security, and protection of public order, environment, moral and health of the population, taxation as well as the list of exclusions.

Article 6. Lists of exclusions and priorities of recipient countries

The list of exclusions shall contain the names of the industries, enterprises and organisations that, in accordance with the national legislation of the Parties, are not liable to privatisation, incorporation or other forms of destatisation of property.

The list of priorities shall establish industries, enterprises, organisations, types of activities and regions for which the privileged conditions of investment attraction are introduced.

Lists of exclusions and priorities shall be liable to publication in official publications of the Parties and of the IEC.

Part II. STATE GUARANTEES OF PROTECTION OF INVESTMENTS

Article 7. Legal regulation of investment activities

Relations connected with implementation of investments and activities of investors in connection with them shall be regulated by this Convention, the national legislation of the Parties as well as international treaties (agreements) in which they are participants.

Article 8. Legal protection of investments

Investments in the territory of the Parties shall be given unconditional legal protection to be secured by this Convention, the national legislation of the Parties as well as international treaties (agreements) in which they are participants.

Article 9. Guarantees of protection of investments against nationalisation and requisition, and against decisions and actions (omissions) of state bodies and officials infringing upon the rights of the investor

Investments shall not be liable to nationalisation and may not be subjected to requisition except in exclusive cases (natural calamities, incidents, epidemic, epizootic and other circumstances of extreme character) stipulated by the national legislation of the Parties when such measures are taken in public interests stipulated by the Basic Law (Constitution) of the recipient country. Nationalisation or requisition may not be implemented without paying the investor the adequate compensation.

Decisions on nationalisation or requisition of investments shall be taken according to the procedure established by the national legislation of the recipient country.

Decisions of state bodies on nationalisation or requisition of investments may be appealed against according to the procedure established by the national legislation of the recipient country.

The investor shall have the right for reimbursement of the damage caused to him by decisions and actions (omissions) of state bodies or officials contradicting legislation of the recipient country and norms of international law.

Article 10. Compensation for causing damage to the investor

Compensation for causing damage to the investor shall be paid in the currency the investments were made. The procedure for determination of the amount of compensation and of its payment shall be established by the national legislation of the recipient country.

Reimbursement of the damage in case specified in part four of Article 9 of this Convention shall be made in accordance with the norms of the national legislation of the recipient country.

Article 11. Procedure of settlement of disputes arising in connection with implementation of investments

Disputes as regards implementation of investments within the framework of this Convention shall be considered by courts of justice or courts of arbitration of the countries that are participants in disputes, the Economic Court of the Commonwealth of Independent States and/or other international courts of justice or international courts of arbitration.

Article 12. Guarantees for use of incomes

Upon payment of taxes and duties on incomes obtained in monetary form from investments implemented earlier in accordance with the national legislation of the recipient country that is participant in the Convention, the investor shall be guaranteed:

the use of incomes in the currency of the country of origin of investments and/or the currency of the recipient country for the purpose of investment and reinvestment as well as for purchase of goods in the territory of the recipient country;

the use of incomes in the currency of the recipient country for purchase of other currency of the Parties on the domestic currency market of the recipient country;

free transfer of incomes to any country at discretion of the investor.

Upon payment of taxes and duties on incomes obtained in kind from investments implemented earlier in accordance with the legislation of the recipient country that is participant in the Convention, the investor shall be guaranteed:

the use of said incomes for the purposes of investment and reinvestment in the territory of the recipient country;

export of goods from the customs territory of the recipient country according to the procedure established by the legislation of the recipient country with due account of the provisions of this Convention and international treaties (agreements) of the recipient country.

Transfer of resources in accordance with the provisions of this Convention shall be made according to the official rate of currency exchange in force in the recipient country on the date of transfer.

The recipient country may limit the application of legislation on transfer of incomes from implemented investments in the country of origin of these investments or other countries in cases concerning bankruptcy, insolvency as well as protection of the rights of the creditor.

Article 13. Insurance of property and risks

Insurance of property and risks of enterprises with investments of the Parties shall be made in accordance with the legislation of the recipient country.

Part III. ACQUISITION BY THE INVESTOR OF SHARES AND OTHER SECURITIES. PARTICIPATION OF THE INVESTOR IN PRIVATISATION

Article 14. Acquisition of shares and other securities

The investor shall have the right to acquire shares and other securities of economic subjects and other issuers including state securities in accordance with the legislation of the recipient country.

Shares and other securities circulating on the stock market of the recipient country may be acquired by the investor with payment made in the currency of the recipient country or in other currency if the legislation of the recipient country does not stipulate otherwise.

Article 15. Participation of the investor in privatisation and protection of his rights

The investor may participate in privatisation of facilities representing state or municipal property on conditions and according to the procedure defined by legislation of the recipient country.

Cancellation of a decision on privatisation of a facility as well as alteration of the procedure and method of privatisation in case if an investor took part in privatisation of the facility as well as, equally, cancellation of transactions on privatisation may be performed through a court of justice.

Article 16. Information support for the process of privatisation

The Parties shall undertake, when privatisation is carried out, to inform each other on the following issues:

on the essence of privatisation;

on the progress of privatisation including auctions, contests, the place and the time of their holding and on enterprises to be privatised;

on the schedules of auctions and contests;

on the procedure of acquisition of shares of privatised enterprises;

on the process of sale of privatisation facilities;

on the most important facilities proposed for sale;

on forthcoming sales of privatisation facilities.

Article 17. Arrangement of the rights of ownership for the property privatised

Acquisition of state and municipal property in the process of privatisation shall be carried on the basis of sale contracts made between the investor and the person who exercises the functions of the vendor of privatised property.

Contracts on sale (purchase) of shares of privatised enterprises shall be liable to registration according to the procedure defined by legislation of the recipient country.

Other procedures of acquisition of state and municipal property in the process of privatisation may not be allowed.

Part IV. ACQUISITION BY THE INVESTOR OF RIGHTS OF PROPERTY FOR LAND AND OTHER NATURAL RESOURCES AND OF OTHER RIGHTS OF PROPERTY

Article 18. Rights of property for land and other natural resources

Acquisition by the investor of rights of property for lots of land, natural resources and immovable property shall be exercised in accordance with the legislation of the recipient country.

Article 19. Concession contracts and agreements on division of products made with the foreign investor

Provision to the investor of the rights for use of natural resources and performance of types of activities referred to the state monopoly of the recipient country as well as of the rights to entrepreneurial activities connected with the use of facilities representing state property of the recipient country shall be executed in accordance with concession contracts and agreements on division of products made according to the procedure established by legislation of the recipient country.

Article 20. Giving property on lease

Giving on lease to the investor of property of citizens and legal entities of the recipient country and of facilities of state property of the recipient country and giving on lease to investors of one's own property located in the territory of the recipient country as well as cancellation of such contractual relations shall be executed according to the procedure and on conditions established by the legislation of the recipient country.

Part V. FINAL PROVISIONS

Article 21. Relationship between the Convention and international treaties (agreements)

The provisions of this Convention shall not touch upon provisions of other international treaties (agreements) to which the Parties are participants.

Article 22. Bilateral agreements

This Convention may be the basis for making by the parties of bilateral agreements protecting the rights of the investor.

If required, certain provisions of the Convention may be made more specific in bilateral agreements.

Article 23. Procedure of entry into force of the Convention

This Convention shall be subject to ratification by the signatory Parties in accordance with their domestic procedures and shall enter into force on the 30th day as of the day of submission of the third instrument of ratification to the depository for deposit. For Parties that ratify the Convention later, the Convention shall come into force on the 30th day as of the day of submission by them of their instruments of ratification to the depository for deposit.

Article 24. Term of validity of the Convention

This Convention shall be valid during 10 years as of the day of its entry into force. On expiry of this period, the convention shall be automatically extended each time for a new 10-year period unless the Parties take another decision.

For purposes of resolution of possible disputes and claims, including those having material nature, the provisions of this Convention shall remain valid with regard to the Party withdrawn until the complete settlement of all issues of dispute.

Article 25. Procedure for accession to the Convention

Other states may accede to this Convention, after it enters into force, with consent of the Parties, by way of transfer to the depository of documents on such accession. Accession shall be considered as valid on expiration of 30 days as of the day of receipt by the depository of the last notification of the consent of the parties with such accession.

Article 26. Procedure of withdrawal from the Convention

Each party may withdraw from this Convention by sending a written notification about this to the depository not later than 12 months before the withdrawal.

Article 27. Procedure of making amendments and additions to the Convention

On mutual agreement of the parties, this Convention may be subject to amendments and additions.

Article 28. Settlement of disputes connected with interpretation of the Convention

Disputable issues connected with interpretation of the Convention shall be settled by way of consultations of the Parties or by applying to the Economic Court of the Commonwealth of Independent States.

Made in the City of Moscow on March 28th, 1997, in one authentic copy in the Russian language. The authentic copy shall be deposited with the Executive Secretariat of the Commonwealth of Independent States, which shall forward to each state signatory to this Convention its certified copy.

Particular opinion of the Republic of Armenia to the Convention on the Protection of the Rights of the Investor

1. In Article 10, at the end of the first sentence, it is necessary to add the words "or in another currency if the Parties agree to it".

2. Article 11 shall be stated in the following wording: "Within the framework of this Convention, disputes arising between the country of origin of investments and the recipient country shall be settled according to the legislation of the recipient country unless another procedure is stipulated between the Parties according to a bilateral agreement on the protection of investments".

3. The first paragraph of Article 16 shall have the following wording: "When making privatisation the Parties shall exchange the following information" and further on as stated in the text.