

Agreement
between the Government of the Republic of Estonia
and the Government of the Republic of Kazakhstan
on the promotion and reciprocal protection of investments

The Government of the Republic of Estonia and the Government of the Republic of Kazakhstan (hereinafter the “Contracting Parties”);

desiring to promote greater economic co-operation between them, with respect to investment made by investors of one Contracting Party in the territory of the other Contracting Party;

recognising that agreement on the promotion and reciprocal protection to be accorded to such investment will stimulate the flow of private capital and the economic development of the Contracting Parties;

agreeing that a stable framework for investment will maximise effective utilisation of economic resources and improve living standards;

have agreed as follows:

Article 1
Definitions

For the purposes of this Agreement:

1. The term “investor” means in respect of either Contracting Party:

a) a natural person, who is a national of the State of a Contracting Party and who makes an investment in the territory of the other Contracting Party;

b) a legal entity which is incorporated or properly organised under the legislation of the State of that Contracting Party and is the owner, possessor or shareholder of an investment in the territory of the other Contracting Party.

2. In respect of the Republic of Estonia the term “investor” also means a legal entity of a Member State of the European Union or of the European Economic Area who, within the context of freedom of establishment pursuant to Articles 49 and 54 of the Treaty on Functioning of European Union, enjoys freedom of establishment as an agency or permanent establishment in the Republic of Estonia.

3. The term “investment” means every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the legislation of the latter State and shall include in particular:

a) movable and immovable property as well as any other rights, such as mortgages, pledges, usufructs and similar rights;

b) stocks, shares and other forms of participation in companies;

c) returns reinvested, debentures, claims to money or any other rights to legitimate performance having financial value related to an investment;

d) intellectual property rights, as defined in the multilateral agreements concluded under the auspices of the World Intellectual Property Organization, in as far as both Contracting Parties are parties to them, including copyrights and related rights, industrial property rights, trademarks, patents, industrial designs and technical processes, rights in plants varieties, know-how, trade secrets, trade names and goodwill;

e) rights to engage in economic and commercial activities conferred by the legislation of the States of the Contracting Parties.

Any change of the form in which assets are invested or reinvested shall not affect their character as an investment.

4. The term “returns” means income deriving from an investment and includes, in particular, profits, dividends, interests, patent and any other fees.

5. The term “territory” means:

concerning the Republic of Estonia – the land territory and the territorial sea of the Republic of Estonia, as well as those maritime areas adjacent to the external boundary of the territorial sea, including the seabed and subsoil of either of the above territories, over which the Republic of Estonia exercises, in accordance with international law, sovereign rights and jurisdiction;

concerning the Republic of Kazakhstan – the territory of the within the land, sea and air borders, including land, water, subsoil and airspace for which the Republic of Kazakhstan exercises sovereignty and expands jurisdiction in accordance with the standards of the national legislation and international law.

Article 2

Promotion and admission of investments

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with the legislation of its State.

2. In order to encourage mutual investment flows, each Contracting Party shall endeavour to inform the other Contracting Party, at the request of either Contracting Party of the investment opportunities in its territory.

3. Each Contracting Party shall grant, whenever necessary, in accordance with the legislation of its State, without delay, the permits required in connection with the activities of key personnel including top managerial and technical persons, consultants or experts engaged by investors of the other Contracting Party.

Article 3 **Protection of investments**

1. Each Contracting Party shall extend in its territory full protection and security to investments and returns of investors of the other Contracting Party. Neither Contracting Party shall hamper, by arbitrary or discriminatory measures, the development, management, maintenance, use, expansion, sale and if it is the case, the liquidation of such investments.

2. Investments or returns of investors of either Contracting Party in the territory of the other Contracting Party shall be accorded fair and equitable treatment in accordance with international law.

Article 4 **National treatment and most favoured nation treatment**

1. Neither Contracting Party shall accord in its territory to investments and returns from investments of investors of the other Contracting Party a treatment less favourable than that which it accords to investments and returns from investments of its own investors, or to investments and returns from investments of investors of any third State, whichever is more favourable to the investors concerned.

2. Neither Contracting Party shall accord in its territory to the investors of the other Contracting Party with regard to acquisition, development, management, maintenance, use, expansion, sale or other disposal of their investment, a treatment which is less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable to the investors concerned.

3. Neither Contracting Party shall in its territory impose mandatory measures on investments by investors of the other Contracting Party, concerning the purchase of materials, means of production, operation, transport, marketing of its products or similar orders having unreasonable or discriminatory effects.

4. The provisions of paragraph 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of preference or privilege which may be extended by the former Contracting Party by virtue of:

- a) any existing or future customs union or economic or monetary union, free trade area or similar international agreements to which either of the Contracting Party is or may become a

party in the future;

- b) any international agreement, wholly or partially related to taxation.

Article 5

Expropriation

1. A Contracting Party shall not expropriate or nationalise directly or indirectly in its territory investments of the investors of the other Contracting Party or take any measures having equivalent effect (hereinafter referred to as “expropriation”) except if the following conditions occur simultaneously:

- a) for a purpose which is in the public interest,
- b) on a non-discriminatory basis,
- c) in accordance with due process of law, and
- d) accompanied by payment of prompt, adequate and effective compensation.

2. Compensation shall amount to the fair market value of the investment expropriated immediately before the expropriation or impending expropriation became known, whichever is the earlier. It shall be paid without delay, be effectively realisable and freely transferable.

3. An investor of a Contracting Party affected by the expropriation carried out by the other Contracting Party shall have the right to prompt review of its case, including the valuation of its investment and the payment of compensation in accordance with the provisions of this Article, by a judicial authority or another competent and independent authority of the latter Contracting Party.

Article 6

Compensation for damage or loss

1. When investments made by investors of either Contracting Party suffer loss or damage owing to war or other armed conflict, civil disturbances, state of national emergency, revolution, riot or similar events in the territory of the other Contracting Party they shall be accorded by the host Contracting Party treatment, as regards restitution, compensation or other settlement, not less favourable than the treatment that it accords to its own investors or to investors of any third State, whichever is more favourable to the investors concerned.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in any of the events referred to paragraph 1 of this Article suffer damage or loss in the territory of the other Contracting Party resulting from:

- a) requisitioning of their property or part thereof by its authorities;
- b) destruction of their property or part thereof by its authorities which was not caused in combat or was not required by the necessity of the situation,

shall be accorded prompt, adequate and effective compensation or restitution for the damage or loss sustained during the period of requisitioning or as a result of destruction of their property. Resulting payments shall be made in freely convertible currency and be freely transferable without delay.

Article 7 Transfers

1. In accordance with the legislation of its States each Contracting Party shall ensure free transfer of payments relating to the investments of the other Contracting Party in its territory. Such transfers shall include, in particular:

- a) the initial capital and additional amounts to maintain or increase investments;
- b) returns;
- c) payments made under a contract including loan agreements;
- d) proceeds from the sale or liquidation of all or any part of investments;
- e) payments of compensation under Articles 5 and 6 of this Agreement;
- f) payments arising out of the settlement of an investment dispute;
- g) earnings and other remuneration of personnel engaged from abroad in connection with investments.

2. Each Contracting Party shall ensure that the transfers under paragraph 1 of this Article are made in a freely convertible currency, at the market rate of exchange prevailing on the date of transfer and shall be made without delay.

3. The provisions of this Article shall not be construed so as to prevent Contracting Parties from fulfilling in good faith its obligations as a member of an economic, customs and monetary union.

4. Without prejudice to the provisions of this Article either Contracting Party, in exceptional financial and economic circumstances, as well as in the case of serious difficulties with payment balance may impose currency restrictions in accordance with the legislation of its State and the requirements of the Articles of Agreement of the International Monetary Fund, adopted on 22 July 1944 at Bretton Woods.

Article 8 Subrogation

1. If the investments of the investors of one Contracting Party made in the territory of the other Contracting Party are insured against non-commercial risks under a system established by the legislation of the latter Contracting Party, any subrogation of the insurer which stems from the terms of the insurance agreement shall be recognised by the other Contracting Party.

2. The insurer shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise. Subrogated claims shall not exceed the original claims.

Article 9

Settlement of disputes between a Contracting Party and an investor of the other Contracting Party

1. An investor of one Contracting Party that has a dispute with the other Contracting Party should initially attempt to settle it through negotiations and consultations.
2. To start negotiations, the investor shall deliver to the Contracting Party a written notice. The notice shall specify:
 - a) the name and address of the disputing investor;
 - b) the provisions of this Agreement alleged to have been breached according to the investor;
 - c) the factual and legal basis for the claim; and
 - d) the remedy sought and the amount of damages claimed.
3. If the dispute cannot be settled amicably within six months from the moment of receipt of the written notice, the dispute shall upon the request of the investor be settled as follows:
 - a) by a competent court of the Contracting Party in whose territory the investment is made; or
 - b) by the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington on 18th March 1965. In case of arbitration, each Contracting Party, by this Agreement irrevocably consents in advance to submit any such dispute to ICSID. This consent implies the renunciation of the requirement that the internal administrative or judicial remedies should be exhausted; or
 - c) by arbitration by three arbitrators in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law. In case of arbitration, each Contracting Party, by this Agreement irrevocably consents in advance, even in the absence of an individual arbitral agreement between the Contracting Party and the investor, to submit any such dispute to the tribunal mentioned.
4. The award shall be final and binding. Each Contracting Party shall ensure the recognition and enforcement of the arbitral award in accordance with legislation of its States.
5. A Contracting Party which is a party to a dispute shall not, at any stage of conciliation or arbitration proceedings or enforcement of an award, raise the objection that the investor of the Contracting Party who is the other party to the dispute has received an indemnity by virtue of a guarantee in respect of all or a part of its losses.

6. An investor who has submitted the dispute to a national court in accordance with subparagraph a) of the paragraph 3 of this Article or to one of the arbitral tribunals mentioned in subparagraphs b) and c) of the paragraph 3 of this Article shall not have the right to pursue his case in any other court or tribunal. The investor's choice of the court or arbitral tribunal is final and binding.

Article 10

Settlement of disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled as far as possible by negotiations and consultations.

2. If a dispute under paragraph 1 of this Article cannot be settled within six months it shall upon the request of either Contracting Party be submitted to an arbitral tribunal of three members.

3. Each Contracting Party shall appoint one member and these two members shall agree upon a national of a third State as their chairman. Such members shall be appointed within two months from the date one Contracting Party has informed the other Contracting Party of its intention to submit the dispute to an arbitral tribunal, the chairman of which shall be appointed within two further months.

4. If the periods specified in paragraph 3 of this Article are not observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of the State of either Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-president or in case of his inability the member of the International Court of Justice next in seniority according to the Rules of the Court should be invited under the same conditions to make the necessary appointments.

5. The arbitral tribunal shall establish its own rules of procedure unless the Contracting Parties decide otherwise.

6. The arbitral tribunal shall reach its decision in virtue of this Agreement and pursuant to the rules of international law. It shall reach its decision by a majority of votes, the decision shall be final and binding for Contracting Parties.

7. Each Contracting Party shall bear the costs of its own member and of its legal representation in the arbitration proceedings. The costs of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The tribunal may, however, in its award determine another distribution of costs.

Article 11

Application of the Agreement

This Agreement shall apply to investments made prior to or after the entry into force of this Agreement, but shall not apply to any investment dispute that may have arisen before its entry into force.

Article 12
Entry into force, duration and denunciation

1. This Agreement shall enter into force on the date of receipt of the latter notification through diplomatic channels by which Contracting Parties notify that their internal legal requirements for the entry into force of this Agreement have been fulfilled.
2. This Agreement shall remain in force for a period of ten years and shall be extended thereafter for following ten years periods unless, one year before the expiration of the initial or any subsequent period, either Contracting Party notifies in writing through diplomatic channels the other Contracting Party of its intention not to prolong the duration of this Agreement.
3. In respect of investments made prior to the date when the denunciation of this Agreement becomes effective, the provisions of this Agreement shall continue to be effective for a period of ten years from the date of denunciation of this Agreement.
4. This Agreement may be terminated by giving notice in writing through diplomatic channels six months beforehand, if the obligations of the Republic of Estonia arising from its membership of the European Union necessitate it, in the condition that the level of protection of investments remains equal to the level provided by this Agreement.

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

Done at Tallinn on 20 April 2011 in duplicate, in the Estonian, Kazakh, Russian and English languages, all texts are being equally authentic. In a case of divergence of interpretation of the provisions of this Agreement, the English text shall prevail.

**For the Government of the Republic of
Estonia
Juhan Parts**

**For the Government of the Republic of
Kazakhstan
Yerzhan Kazaykhanov**