

**AGREEMENT BETWEEN
THE GOVERNMENT OF THE PEOPLE’S REPUBLIC OF CHINA
AND
THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN
ON THE PROMOTION AND RECIPROCAL PROTECTION OF
INVESTMENTS**

The Government of the People’s Republic of China and the Government of the Republic of Kazakhstan (hereinafter referred to as the “Parties”),

Recognizing the rapid growth of investment flows between the Parties;

Recognizing that the encouragement, promotion and protection of such investments will be conducive to stimulating business initiative of the investors and enhancing economic prosperity of the Parties;

Desiring to further promote investment and intensify economic cooperation between the Parties; and

Desiring to create a transparent, stable and predictable investment environment;

Have agreed as follows:

**Section A
General Provisions**

**Article 1
Definitions**

For the purposes of this Agreement:

“Centre” means the International Centre for Settlement of Investment Disputes (“ICSID”) established by the ICSID Convention;

“enterprise” means any legal entity constituted or organized under applicable legislation of a Party, whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization; and a branch of an enterprise;

“existing” means in effect on the date of entry into force of this Agreement;

“freely usable currency” means “freely usable currency” as determined by the International Monetary Fund under its Articles of Agreement;

“GATS” means the General Agreement on Trade in Services, contained in Annex 1B to the WTO Agreement;

“ICSID Additional Facility Rules” means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;

“ICSID Convention” means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965;

“covered investment” means, with respect to a Party, an investment in its territory of an investor of the other Party in existence on the date of the entry into

force of this Agreement or an investment of an investor of the other Party admitted by the Party in accordance with its legislation thereafter, and which has such characteristics as the commitment of capital or other assets, the expectation of gain or profit and the assumption of risk;

“investment” means every asset that an investor owns or controls, directly or indirectly, and includes the following:

- a) an enterprise;
- b) shares, stock, and other forms of equity participation in an enterprise;
- c) bonds, debentures, other debt instruments, and loans (including loans to, or debt securities issued by a Party);
- d) futures, options and other derivatives;
- e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
- f) intellectual property rights;
- g) licenses, authorizations, permits, and similar rights conferred pursuant to the legislation of a Party; and
- h) other tangible or intangible, movable or immovable property, or other property rights;

“investor of a Party” means:

- a) a natural person who is a national of the State of this Party in accordance with its national legislation; or
- b) an enterprise of the State of this Party, which makes or has made an investment, or has undertaken concrete actions for the purpose of making an investment¹ in the territory of the other Party;

“measure” includes any law, regulation, procedure, requirement, or practice;

“national legislation” means laws, regulations, rules, procedures of the States of the Parties;

“protected information” means confidential business information or information that is privileged or otherwise protected from disclosure under a Party’s national legislation;

“Secretary-General” means the Secretary-General of ICSID;

“territory” means:

- a) with respect to the People’s Republic of China, the entire customs territory of China, including land territory, territorial airspace, internal waters and territorial sea as well as their bed and subsoil, and any area beyond its territorial sea within which it may exercise sovereign rights and/or jurisdiction in accordance with international law and its domestic law; and

- b) with respect to the Republic of Kazakhstan, the territory of the Republic of Kazakhstan, within land, maritime, and air boundaries, including land, waters, subsoil and airspace, over which the Republic of Kazakhstan exercises sovereignty and extends jurisdiction in accordance with its national legislation and

¹ For greater certainty, concrete actions for the purpose of making an investment include actions such as the allocation of resources or capital for the establishment of a business

international law;

“TRIPS Agreement” means the Agreement on Trade-Related Aspects of Intellectual Property Rights, contained in Annex 1C to the WTO Agreement;

“UNCITRAL Arbitration Rules” means the arbitration rules of the United Nations Commission on International Trade Law;

“WTO Agreement” means the Marrakesh Agreement Establishing the World Trade Organization, done on April 15, 1994.

Article 2

Scope and Coverage

1. This Agreement applies to measures adopted or maintained by a Party relating to:

- a) investors of the other Party; and
- b) covered investments.

2. The provisions in this Agreement shall apply to all investments made by investors of a Party in the territory of the other Party, whether made before or after the entry into force of this Agreement, but shall not apply to claims arising out of events which occurred, or claims which had been raised, prior to the entry into force of this Agreement. For greater certainty, this Agreement shall not apply to disputes which had been raised or resolved prior to the entry into force of this Agreement.

3. The provisions of this Agreement shall not apply to:

a) subsidies or grants provided by the Parties, including government-supported loans, guarantees or insurance, or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether such subsidies or grants are offered exclusively to investors of States of the Parties or their investments, unless such subsidies or grants are provided through a written investment agreement between a Party and an investor of the other Party;

b) matters of taxation in the territory of either Party, except as set out in Article 22 of this Agreement. Nothing in this Agreement shall affect the rights and obligations of either Party under the Agreement between the Government of the People’s Republic of China and the Government of the Republic of Kazakhstan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income of September 12, 2001, as may be amended from time to time (“DTA”). In the event of any inconsistency between this Agreement and the DTA, the latter shall prevail to the extent of the inconsistency; and

c) public procurement. For greater certainty, this paragraph does not prevent this Agreement from applying to measures that affect investment invested as the result of such procurement.

Article 3

National Treatment

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the management, conduct, operation, and sale or other disposition of investments.

3. For greater certainty, the reference to “like circumstances” in this Article requires a comprehensive examination in each specific case of the totality of the circumstances of the investment, including:

- a) the sector in which the investor operates;
- b) the purpose of the relevant measure;
- c) whether the relevant treatment distinguishes between investors or investments based on legitimate public welfare or public policy objectives; and
- d) other factors directly relevant to the investment or investor with respect to the measure under consideration.

4. This Article does not apply to:

- a) any existing non-conforming measures maintained within the territory of a Party; or
- b) the continuation or amendment of any non-conforming measure referred to in sub-paragraph (a) of this paragraph.

Article 4

Most-Favored-Nation Treatment

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to investors of any non-Party with respect to the management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments of investors of any non-Party with respect to the management, conduct, operation, and sale or other disposition of investments in its territory.

3. The provisions of this Article shall not be construed as obliging one Party to extend to investors of the other Party and investments of investors of the other Party the benefits of any treatment, preferences or privileges resulting from:

- a) any existing or future customs union, free trade area, free trade arrangement, common market to which either of the Parties is a party;
- b) any bilateral or multilateral investment agreements in force or signed before the date of entry into force of this Agreement; and

c) agreements for the Avoidance of Double Taxation or other international agreements on taxation.

4. For greater certainty, the reference to “like circumstances” in this Article requires a comprehensive examination in each specific case of the totality of the circumstances of the investment, including:

- a) the sector in which the investor operates;
- b) the purpose of the relevant measure;
- c) whether the relevant treatment distinguishes between investors or investments based on legitimate public welfare or public policy objectives; and
- d) other factors directly relevant to the investment or investor with respect to the measure under consideration.

5. For greater certainty, treatment referred to in this Article does not encompass dispute resolution mechanisms or procedures, such as those included in Section B of this Agreement, that are provided for in international investment or trade agreements.

Article 5

Fair and Equitable Treatment

1. Each Party shall accord covered investment fair and equitable treatment and full protection and security.

2. A Party breaches the obligation of fair and equitable treatment referred to in paragraph 1 of this Article, if the measure taken constitutes:

- a) denial of justice in criminal, civil or administrative proceedings;
- b) substantial breach of due process; or
- c) outright arbitrariness.

For greater certainty, the mere fact that a Party takes or fails to take action that may not meet an investor’s legitimate expectations is not a breach of this Article, even if the result would be a loss or reduction in the size of covered investment.

3. A finding that there has been a breach of another provision of this Agreement or a separate international agreement does not establish that there has been a breach of this Article.

Article 6

Treatment in Case of Armed Conflict or Civil Strife

1. Each Party shall accord to investors of the other Party and to covered investments non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

2. Notwithstanding paragraph 1 of this Article, if an investor of one Party, in the situations referred to in paragraph 1 of this Article, suffers a loss in the territory

of the other Party resulting from:

a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or

b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for such loss. Any compensation shall be in accordance with paragraphs 2 through 4 of Article 7 of this Agreement, *mutatis mutandis*.

Article 7 Expropriation and Compensation

1. Neither Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization ("expropriation"), except:

a) for a public purpose;

b) in a non-discriminatory manner;

c) on payment of compensation in accordance with this article; and

d) in accordance with due process of law.

2. The compensation referred to in subparagraph (c) of paragraph 1 of this Article shall:

a) be paid without delay;

b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("the date of expropriation");

c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

d) be fully realizable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation referred to in subparagraph (c) of paragraph 1 of this Article shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable interest rate for that currency accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation referred to in subparagraph (c) of paragraph 1 of this Article – converted into the currency of payment at the market rate of exchange prevailing on the date of payment – shall be no less than:

a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus

b) interest, at a commercially reasonable interest rate for that freely usable currency accrued from the date of expropriation until the date of payment.

5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the

extent that such issuance, revocation, limitation, or creation is consistent with the TRIPS Agreement.

Article 8

Payments and Transfers

1. Except for the cases provided for in Article 9 of this Agreement, each Party in whose territory the investments of investors of the other Party have been made, after fulfilling all tax obligations in accordance with its national legislation, authorizes investors of the other Party any transfers and payments related to investments into its territory and/or beyond its borders. Such payments and transfers include:

- a) contributions to capital;
- b) profits;
- c) proceeds from the sale of all or any part of the investment, proceeds from the partial or complete liquidation of the investment;
- d) payments made under contracts, including loan agreements;
- e) wages and other remuneration of personnel employed abroad and working in the territory of the Party in which the investors' investments were made; and
- f) payments under the Article 7 and the Section B of this Agreement.

2. Transfers and payments referred to in paragraph 1 of this Article shall be made without undue delay and without restrictions in a freely usable currency at the market exchange rate prevailing at the day of transfer or payment.

3. Notwithstanding the provisions of paragraph 1 and 2 of this Article, a Party may delay or restrict a payment or transfer through the equitable, non-discriminatory and good faith application of its national legislation relating to:

- a) bankruptcy, insolvency or protection of the rights of creditors;
- b) compliance with labor obligations;
- c) issuing, trading or dealing in securities or derivatives (derivative financial instruments);
- d) assistance of law enforcement or financial regulators;
- e) criminal offenses;
- f) compliance with the legislation on taxes and other mandatory payments to the budget;
- g) insurance of compliance with the orders or decisions of judicial, administrative or arbitration processes;
- h) compliance with social security and public retirement savings obligations; and
- i) combating the legalization (laundering) of proceeds from crime, financing of terrorism and financing of proliferation of weapons of mass destruction.

4. Nothing in this Agreement shall affect the rights and obligations of a Party that is a member of the International Monetary Fund under the Articles of the Agreement of the International Monetary Fund, including the use of foreign exchange transactions that are in conformity with the Articles of the Agreement of

the International Monetary Fund, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific obligations under this Agreement regarding such transactions, except under Article 9 of this Agreement or at the request of the International Monetary Fund.

Article 9 **Restrictions to Safeguard the Balance of Payments**

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, nothing in this Agreement shall be construed as preventing a Party from adopting or maintaining restrictions on payments or transfers related to the capital movements.

2. Any measures, adopted or maintained under the paragraph 1 of this Article shall:

a) be consistent with the Articles of Agreement of the International Monetary Fund;

b) avoid unnecessary damage to the commercial, economic and financial interests of investors of the other Party;

c) not exceed those necessary to deal with the circumstances described in paragraph 1 of this Article;

d) be temporary and be phased out progressively as the situation specified in paragraph 1 of this Article improves; and

e) be applied on a non-discriminatory basis.

3. Any restrictions adopted or maintained under paragraph 1 of this Article, or any changes therein, shall be notified to the other Party.

4. The Party adopting any restrictions under paragraph 1 of this Article shall commence consultations with the other Party to review the restrictions adopted by it.

5. In determining the scope of such restrictions, the Parties may give preference to sectors of the economy that are more important to their economic or development programs. However, such restrictions shall not be adopted or maintained in order to protect a particular sector of the economy.

Article 10 **Performance Requirements**

Parties reaffirm their obligations under the WTO Agreement on Trade Related Investment Measures (TRIMS) and their rights and obligations set out in accordance with their Protocols of Accession to the WTO.

Article 11 **Entry of Personnel**

The Parties reaffirm their commitments with respect to intra-corporate transferees and business visitors under their GATS commitments.

Article 12

Publication of Laws and Regulations Respecting Investment

1. Each Party shall ensure that its laws, regulations and rules of general application are promptly published or otherwise made publicly available.

2. Each Party shall publish in advance draft laws and regulations of general application in accordance with its national legislation.

3. With respect to laws and regulations of general application covered by this Agreement, each Party should, to the extent possible, publish the laws and regulations in official websites or journals of national circulation.

4. One Party may request the other Party to provide a copy of its laws, regulations and rules of general application relating to investments. The Parties may commence consultations in order to clarify the requested documents.

Article 13

Transparency

1. The Parties agree to consult periodically on ways to improve the transparency practices set out in this Article and Article 12 of this Agreement.

2. To the extent possible, each Party should publish in advance any measure referred to paragraph 1 of Article 12 of this Agreement that it proposes to adopt.

3. Provision of Information

a) On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure that the requesting Party considers might materially affect the operation of this Agreement or otherwise substantially affect its interests under this Agreement in accordance with requirements of Article 20 of this Agreement.

b) Any request or information under this paragraph shall be provided to the other Party through the relevant contact points.

c) Any information provided under this paragraph shall be without prejudice as to whether the measure is consistent with this Agreement.

4. Administrative Proceedings

With a view to administering in a consistent, impartial, and reasonable manner all measures referred to in Article 12 of this Agreement, each Party shall ensure that in its administrative proceedings applying such measures to particular covered investments or investors of the other Party in specific cases:

a) wherever possible, covered investments or investors of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in

controversy;

b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

c) its procedures are in accordance with domestic law.

5. Review and Appeal

a) Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

b) Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(i) a reasonable opportunity to support or defend their respective positions; and

(ii) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

c) Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by the offices or authorities with respect to the administrative action at issue.

Article 14

Special Formalities and Information Requirements

1. Nothing in Article 3 of this Agreement shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that investors be residents of the Party or that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Agreement.

2. Notwithstanding Articles 3 and 4 of this Agreement, a Party may require an investor of the other Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 15

Other International Agreements and Obligations

1. In case an international treaty to which the States of the both Parties are party provides for more favourable treatment in respect of matters covered by this Agreement for their persons and investments, such more favourable treatment shall be applied.

2. In case legislation of a Party provides for more favourable treatment in respect of matters covered by this Agreement for the persons of the other Party and investments of the persons of the other Party, such more favourable treatment shall be applied.

Article 16

Subrogation

If a Party (or any statutory body, governmental agency or institution, or corporation designated by the Party) makes payment to an investor of the Party under a guarantee, a contract of insurance or other form of indemnity that it has entered into with respect to a covered investment, the other Party, in whose territory the covered investment was made, shall recognize the subrogation or transfer of any rights the investors would have possessed under this Agreement with respect to the covered investment but for the subrogation, including any rights under Section B of this Agreement, and the investor shall be precluded from pursuing such rights to the extent of the subrogation.

Article 17

Denial of Benefits

1. A Party may deny the benefits of this Agreement to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if a non-Party, or persons of a non-Party own or control the enterprise and the denying Party:

a) does not maintain diplomatic relations with the non-Party; or
b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Agreement were accorded to the enterprise or to its investments.

2. A Party may deny the benefits of this Agreement to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of the other Party and a non-Party, or persons of a non-Party or the denying Party, own or control the enterprise.

Article 18

Essential Security

1. Nothing in this Agreement shall be construed:
 - a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or
 - b) to preclude a Party from applying measures that it considers in good faith necessary for the fulfillment of its obligations under the United Nations Charter with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.
2. With respect to investors of the other Party and covered investments affected by measures under subparagraph (b) of paragraph 1 of this Article, each Party shall accord non-discriminatory treatment to them, regardless of their ownership.

Article 19

Right to Regulate

The Parties reaffirm the right to regulate within their respective territories to achieve legitimate policy objectives, such as the protection of public health, social services, public education, safety, the environment, including the fight against climate change, public morals or national security, consumer protection, privacy and data protection or the promotion and protection of cultural diversity.

The mere fact of a contradiction between government regulatory measures or changes in national legislation of any of the Parties and investors' expectations, in particular, their expectation of profit, or the fact of a negative impact on them, does not constitute a violation of the obligations under Articles 3 and 4 of this Agreement.

Article 20

Disclosure of Information

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to protected information, or other confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 21

Prudential Measures

1. Notwithstanding any other provision of this Agreement, a Party shall not be prevented from adopting or maintaining measures relating to financial services

for prudential reasons, including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial services supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

2. Nothing in this Agreement applies to non-discriminatory measures of general application in pursuit of monetary and related credit policies or exchange rate policies.

3. The competent financial services authority of a Party may make a request for consultations with a counterpart of the other Party regarding any matter relating to prudential regulation of financial services. The competent financial services authorities of the other Party shall respond to a request for consultations within 30 days of receipt of such request. The Parties shall hold consultations thereafter.

4. a) Where a claimant submits a claim to arbitration under Section B of this Agreement and the respondent invokes paragraph 1 or 2 of this Article as a defense, the Investor-State tribunal established pursuant to Section B of this Agreement may not decide whether and to what extent paragraph 1 or 2 of this Article is a valid defense to the claim of the claimant. It shall seek a report in writing from the Parties on this issue. The Investor-State tribunal may not proceed with the arbitration proceeding pending receipt of such a report from the Parties or of a decision of a State-State arbitral court, as the case may be.

b) Pursuant to a request for a report received in accordance with subparagraph (a) of this paragraph, the financial services authorities of the Parties shall engage in consultations. If the financial services authorities of the Parties reach a joint decision on the issue of whether and to what extent paragraph 1 or 2 of this Article is a valid defense to the claim of the claimant, they shall prepare a written report describing their joint decision. The report shall be transmitted to the Investor-State tribunal, and shall be binding on the Investor-State tribunal.

c) If, within 120 days after the date of request for a report referred to in subparagraph (a) of this paragraph, the financial services authorities of the Parties are unable to reach a joint decision on the issue of whether and to what extent paragraphs 1 or 2 of this Article is a valid defense to the claim of the claimant, the issue shall, within 30 days after the expiry of the 120-day period, be referred by either Party to a State-State arbitral tribunal established pursuant to Section C of this Agreement. The decision of the State-State arbitral tribunal shall be transmitted to the Investor-State tribunal, and shall be binding on the Investor-State tribunal. All of the members of any such State-State arbitral tribunal shall have expertise or experience in relevant financial services law or practice, which may include the regulation of financial institutions.

Article 22

Taxation

1. Except as provided in this Article, nothing in Section A of this Agreement shall impose obligations with respect to taxation measures.

2. Article 7 of this Agreement shall apply to all taxation measures, except that a claimant that asserts that a taxation measure involves an expropriation may submit a claim to arbitration under Section B of this Agreement only if:

a) the claimant has first referred to the competent tax authorities of both Parties in writing the issue of whether that taxation measure involves an expropriation; and

b) within 180 days after the date of such referral, the competent tax authorities of both Parties fail to agree that the taxation measure is not an expropriation.

3. Subject to paragraph 4, Article 10 of this Agreement shall apply to all taxation measures.

4. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax conventions to which the States are parties. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail.

Section B

Investor State Dispute Settlement

Article 23

Consultations

1. In the event of an investment dispute, if the claimant intends to submit the dispute to arbitration, it shall deliver a request for consultations to the respondent at least 180 days prior to submission of the dispute to arbitration.

The request shall:

a) specify the name and address of the claimant and, where a claim is submitted on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, the name, address, and place of incorporation of the enterprise;

b) list evidences that the claimant is an investor under this Agreement;

c) for each claim, identify the provision of this Agreement alleged to have been breached and any other relevant provisions;

d) for each claim, identify the measures or events giving rise to the claim;

e) for each claim, provide a brief summary of the legal and factual basis; and

f) specify the relief sought and the approximate amount of damages claimed.

2. After a request for consultations is made pursuant to this Section, the claimant and the respondent shall enter into consultations² with a view to reaching

² Unless otherwise agreed by the parties to the dispute, the place for consultation should be the capital of the respondent.

a mutually satisfactory solution.

Article 24

Submission of a Claim to Arbitration

1. In the event that a disputing party considers that an investment dispute cannot be settled by consultations pursuant to Article 23 of this Agreement and 180 days have elapsed since the date of the request for consultations, the claimant, may submit to arbitration under this Section a claim:

a) that the respondent has breached an obligation under Article 3, Article 4, Article 5, Article 6, Article 7, Article 8, Article 10 or Article 11 of this Agreement; and

b) that the claimant has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor of a Party may not initiate or continue a claim under this Section if a claim involving the same measure or measures alleged to constitute a breach referred to Article 24 of this Agreement and arising from the same events or circumstances is initiated or continued pursuant to an agreement between the respondent and a non-Party by:

a) an enterprise of a non-Party that owns or controls, directly or indirectly, the investor of a Party, or

b) an enterprise of a non-Party that is owned or controlled, directly or indirectly, by the investor of a Party.

Notwithstanding the paragraph 1 of this Article the claim may proceed if the respondent agrees that the claim may proceed.

3. Provided that 180 days have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to in paragraph 1 of this Article:

a) under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the respondent and the non-disputing Party are parties to the ICSID Convention;

b) under the ICSID Additional Facility Rules, provided that either the respondent or the non-disputing Party is a party to the ICSID Convention;

c) under the UNCITRAL Arbitration Rules³; or

d) if the claimant and respondent agree, to any other arbitration institution or under any other arbitration rules.

The claimant may also submit the dispute to a competent court of the Party in which the investment is made in accordance with its national legislation.

4. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of or request for arbitration ("notice of arbitration"):

³ In the case of arbitration under Section B pursuant to the UNCITRAL Arbitration Rules, the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration shall not be applicable unless the disputing parties otherwise agree.

- a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;
- b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General;
- c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 20 of the UNCITRAL Arbitration Rules, are received by the respondent; or
- d) referred to under any arbitral institution or arbitral rules selected under subparagraph (d) of paragraph 3 of this Article is received by the respondent.

5. In addition to any other information required by the applicable arbitral rules, the notice of arbitration shall also include information addressing each of the categories in Article 23 of this Agreement.

6. The arbitration rules applicable under paragraph 3 of this Article, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement.

Article 25

Consent of Each Party to Arbitration

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.

2. The consent under paragraph 1 of this Article and the submission of a claim to arbitration under this Section shall satisfy the requirements of:

- a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute; and
- b) Article II of the New York Convention for an “agreement in writing”.

Article 26

Conditions and Limitations on Consent of Each Party

1. No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under paragraph 1 of Article 24 of this Agreement and knowledge that the claimant has incurred loss or damage.

2. No claim may be submitted to arbitration under this Section unless:

- a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement;
- b) the claim arises from measures included in the request for consultations submitted by the claimant in accordance with Article 23 of this Agreement; and

c) the notice of arbitration is accompanied by the claimant's written waiver of any right to initiate or continue before any administrative tribunal or court under the national legislation of a Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 24 of this Agreement.

Article 27 **Constitution of the Tribunal**

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

3. If a tribunal has not been constituted within 90 days from the date that a claim is submitted to arbitration under this Section, the appointing authority, on the request of a disputing party, shall appoint, in his or her discretion and after consulting with the disputing parties, the arbitrator or arbitrators not yet appointed.

4. The appointing authority may not appoint a presiding arbitrator who is a national of the State of either Party, unless both parties to the dispute otherwise agree.

5. In the event that the appointing authority appoints a presiding arbitrator in accordance with relevant arbitration rules, the presiding arbitrator being appointed should be a recognized expert in public international law, and should be experienced in Investor-State dispute settlement.

Article 28 **Conduct of the Arbitration**

1. The disputing parties may agree in the legal place of any arbitration under arbitral rules applicable under paragraph 3 of Article 24 of this Agreement. If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

2. The non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.

3. Notwithstanding paragraph 2 of this Article, without written consent of disputing parties, the tribunal shall have no authority to accept and consider *amicus curiae* submissions from a person or entity that is not a disputing party.

Article 29 **Third Party Funding**

1. A disputing party shall file a written notice disclosing the name and address of any non-disputing party from which the disputing party, directly or indirectly, has received funds for the pursuit or defense of the proceeding through a donation or grant, or in return for remuneration dependent on the outcome of the proceeding (“third-party funding”). If the non-disputing party providing funding is a juridical person, the notice shall include the names of the persons and entities that own and control that juridical person.

2. The disputing party benefiting from third-party funding shall file the notice referred to in paragraph 1 of this Article with the other disputing party, or in the case of arbitration under ICSID, with the other disputing party and the Secretary General, upon the submission of the notice of arbitration, or immediately upon concluding a third-party funding arrangement after submission of the notice of arbitration.

3. The notice of third-party funding shall be transmitted to any arbitrator proposed for appointment or appointed. The arbitrators shall determine whether the information disclosed may, in the eyes of the disputing parties, give rise to doubts as to their independence or impartiality, or demonstrate bias, conflict of interest, impropriety or an appearance of bias.

4. For greater certainty, this Article is without prejudice to the legal status and legality of third-party funding under national legislation of a Party.

Article 30

Security for Costs

1. The tribunal may order security for costs at a proposal of the Party which is the party to the dispute.

2. In determining whether to order the claimant to provide security for costs, the tribunal shall consider all relevant circumstances, including the existence of third-party funding.

3. The tribunal shall order security for costs where:

a) there is a reason to believe that the claimant will be unable to pay, if a costs award is in favour of the respondent; or

b) there is a reason to believe that the claimant has structured the enterprise or divested assets so as to avoid the consequences of the arbitral proceedings.

4. Should the claimant fail to pay the security for costs ordered by the tribunal, the tribunal shall terminate the arbitral proceedings.

Article 31

Governing Law

1. Subject to paragraph 2 of this Article, when a claim is submitted under paragraph 1 of Article 24 of this Agreement, the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international

law⁴.

2. A joint decision of the Parties declaring their interpretation of a provision of this Agreement shall be binding on a tribunal of any ongoing or subsequent dispute, and any decision or award issued by such a tribunal must be consistent with that joint decision.

Article 32 **Awards**

1. Where a tribunal makes an award against a respondent, the tribunal may award, separately or in combination, only:

- a) monetary damages and any applicable interest; and
- b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.

A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.

2. A tribunal may not award punitive damages.

3. The award shall be made available to the public promptly⁵.

4. A disputing party shall not seek enforcement of a final award until:

- a) in the case of a final award made under the ICSID Convention:
 - (i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or
 - (ii) revision or annulment proceedings have been completed; and
- b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to subparagraph (d) of paragraph 3 of Article 24 of this Agreement:
 - (i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award; or
 - (ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

5. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

6. Nothing in this Section shall be construed as affecting either Party's position on the immunity of its State property, including property of the Central Bank.

Article 33 **Expert Reports**

⁴ For greater certainty, this provision is without prejudice to any consideration of the domestic law of the respondent where it is relevant to the claim as a matter of fact.

⁵ For greater certainty, nothing in this Section requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 18 or Article 20.

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety, or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

Section C State-State Dispute Settlement

Article 34 Consultation

1. In the event that a Party (the complaining Party) considers that a dispute has arisen with the other Party (responding Party), it may deliver to the responding Party a written request for consultations with respect to any act or omission attributable to the responding Party that results in a breach of the provisions of this Agreement

2. The request for consultations shall give the reasons for the request, including identification of the act or omission at issue and an indication of the legal basis for the complaint.

3. If a request for consultations is made pursuant to this Section, the responding Party shall, unless otherwise mutually agreed, enter into consultations in good faith within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually agreed solution. If the responding Party does not enter into consultations within a period of no more than 30 days, or a period otherwise mutually agreed, after the date of receipt of the request, then the complaining Party that requested the holding of consultations may proceed directly to submit the dispute to arbitration pursuant to this Section.

Article 35 Submission of a Dispute to Arbitration

1. In the event that a dispute cannot be settled by consultations under Article 34 of this Agreement within 180 days after the date of receipt of the request for consultations, the complaining Party may submit a matter referred in paragraph 2 of Article 34 of this Agreement to arbitration under UNCITRAL Arbitration Rules.

2. The arbitration rules applicable under paragraph 1 of this Article, and in effect on the date the matter or matters were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by the Parties or this Agreement.

3. The complaining Party shall provide with the notice of arbitration the name of the arbitrator that the complaining Party appoints.

Article 36

Constitution of the Tribunal

1. The tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing Parties which shall not be a national of the State of this Party, and the third, who shall be the chairperson, appointed by agreement of the disputing Parties.

2. If the responding Party fails to appoint an arbitrator, or the disputing Parties fail to jointly appoint the chairperson of the tribunal, within 30 days from the date that a matter is submitted to arbitration under this Section, such arbitrator or chairperson shall be appointed by the President of the International Court of Justice in his or her discretion.

3. If the President of the International Court of Justice is a national or a permanent resident of the State of either Party, or he or she is otherwise unable to act, the Vice-President of the International Court of Justice shall be invited to make the said appointments. If the Vice-President of the International Court of Justice is a national or a permanent resident of the State of either Party, or he or she is otherwise unable to act, the Member of the International Court of Justice next in seniority who is neither a national nor a permanent resident of the State of either Party shall be invited to make the necessary appointments.

Article 37

Conduct of the Arbitration

Without written consent of the disputing Parties, the tribunal shall have no authority to accept and consider *amicus curiae* submissions from a person or entity that is not a disputing Party.

Unless the Parties agree otherwise, the place of arbitration shall be determined by the tribunal.

Article 38

Awards

1. A tribunal may make an award which consists of the following:

- a) a determination that the responding Party has acted inconsistently with the obligations of this Agreement and recommendations, if the Parties have jointly requested them, for resolution of the dispute; or
- b) in the case of an issue submitted to arbitration pursuant to paragraph 4 of Article 21 of this Agreement, a decision on whether and to what extent paragraph 1 or 2 of Article 21 of this Agreement is a valid defense.

2. An award made by a tribunal established under this Section shall have binding force only for the disputing Parties and in respect of the particular case.

3. The disputing Parties shall abide by and comply with an award made by a

tribunal established under this Section without delay and in good faith except where the award is made pursuant to subparagraph (b) of paragraph 1 of this Article.

4. Expenses incurred by the arbitrators, and other costs of the proceedings, shall be paid for equally by the Parties. However, the tribunal may, in its discretion, direct that a higher proportion of the costs be paid by one of the Parties, in accordance with this Agreement and the applicable arbitration rules.

Article 39

Entry into Force, Duration, Transition and Termination

1. This Agreement shall enter into force thirty days after the date of receipt through diplomatic channels of the last written notification of fulfillment by the Parties of internal procedures necessary for entry into force of this Agreement.

2. This Agreement shall be effective for a period of 10 (ten) years and will be automatically renewed for subsequent ten-year periods until one of the Parties notifies in writing the other Party of its intention to terminate this Agreement. This Agreement shall terminate 180 (one hundred and eighty) days from the date of receipt through diplomatic channels by one Party of written notification of the other Party of its intention to terminate this Agreement.

3. From the date of entry into force of this Agreement, the Agreement between the Government of the People's Republic of China and the Government of the Republic of Kazakhstan on the Promotion and Mutual Protection of Investments dated August 10, 1992 (hereinafter – the 1992 Agreement) shall terminate. For greater certainty, Article 12, paragraph 4 of the 1992 Agreement shall terminate.

4. Notwithstanding paragraph 3 of this Article, a claim may be submitted pursuant to relevant provisions of the 1992 Agreement, regarding any act or fact that took place or any situation that existed while the said Agreement was in force, and provided that no more than 3 (three) years have elapsed since the date of the entry into force of this Agreement.

5. The Parties may make amendments and additions to this Agreement, which are an integral part of this Agreement, and which are executed by separate protocols and enter into force in accordance with the procedure provided for in paragraph 1 of this Article upon mutual agreement.

6. All other Articles of this Agreement shall continue to be effective for an additional ten-year period from the date of termination of this Agreement with respect to covered investments made prior to the date of termination of this Agreement.

7. The Annex to this Agreement constitute an integral part of this Agreement.

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

Done at Astana on 16 June 2025 in duplicate, in the Chinese, Kazakh, Russian, and English languages, all texts being equally authentic. In case of disagreement in the interpretation of the provisions of this Agreement, the Parties shall refer to the text in English.

**For the Government
of the People's Republic of China**

(Signature)
Wang Wentao

**For the Government
of the Republic of Kazakhstan**

(Signature)
Murat Nurtleu

Annex Expropriation

The Parties confirm their shared understanding that:

1. Paragraph 1 of Article 7 of this Agreement is intended to reflect customary international law concerning the obligation of States with respect to expropriation.

2. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

3. Paragraph 1 of Article 7 of this Agreement addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.

4. The second situation addressed by paragraph 1 of Article 7 of this Agreement is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and

(iii) the character, and purpose and duration of the government action.

b) Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public moral, public order, public health, safety, and the environment, do not constitute indirect expropriations.