

FRAMEWORK AGREEMENT

between

the Republic of Kazakhstan

and

EUROPEAN INVESTMENT BANK

governing EIB activities in the Republic of Kazakhstan

Brussels, 10 April 2010

MADE BETWEEN:

The Republic of Kazakhstan, represented by the Secretary of State – Minister of Foreign affairs of the Republic of Kazakhstan Mr. Kanat SAUDABAYEV,

hereinafter referred to as “Kazakhstan”,

of the one part, and

European Investment Bank, having its Head Office at 100, boulevard Konrad Adenauer, L – 2950 Luxembourg – Kirchberg, Grand Duchy of Luxembourg, represented by Mr. Philippe MAYSTADT, President,

hereinafter referred to as the “Bank”,

of the other part,

HAVING REGARD TO the Partnership and Co-operation Agreement between the European Communities (hereinafter the "EC") and their Member States, of the one part, and the Republic of Kazakhstan, of the other part, signed on 23 January 1995;

DESIRING, within the framework set by the decisions of the Council of the European Union and/or of the governing bodies of the Bank, to facilitate the financing by means of loans, guarantees or other instruments by the Bank for investment projects of interest to Kazakhstan, and for that purpose to extend certain protection to such projects and to ensure certain rights and privileges for the Bank,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Definitions

For the purposes of this Agreement:

"*Beneficiary*" (or collectively "*Beneficiaries*") means any person, whether the State of Kazakhstan, a natural person or a person established under private or public law, receiving the benefit of financing by means of a loan, guarantee or other instrument provided by the Bank for any Project, including, but not limited to a borrower from the Bank, a co-debtor, a guarantor, a lender guaranteed by the Bank and its borrower or an owner of a Project;

"*Project*" means any investment project, which the Bank finances directly or through an intermediary or which benefits from a loan guaranteed by the Bank, and which satisfies the following criteria:

- (i) it is located in, or its financing by the Bank is effected in or through, the territory of Kazakhstan, and
- (ii) the government of Kazakhstan requests financing for it or acknowledges that the financing falls within the scope of this Agreement,

where the Bank agrees to the financing on a date after the date of entry into force of this Agreement or expressly in expectation of its execution or entry into force;

"*Tax*" means any tax, imposition, duty, levy, withholding or fiscal charge whatsoever, whether national, regional or local, direct or indirect.

ARTICLE 2

Bank's Activity

The Bank may, in accordance with this Agreement, freely pursue within the territory of Kazakhstan the activities envisaged by the Bank's Statute as of the date of signing of this Agreement, including, but not limited to, the granting of loans and/or guarantees for the financing of a Project, the borrowing of funds under the laws and regulations of Kazakhstan by means of all instruments permitted thereby, as well as the holding, use and disposal of such funds and the operation of accounts in any currency. In particular the Bank may, on the basis of its appraisal of a Project, freely decide whether, and on which terms and conditions, to grant finance in support of it.

ARTICLE 3

Taxation of Bank

Interest and all other payments due to the Bank and arising out of activities envisaged by this Agreement, as well as the assets and revenues of the Bank connected with such activities, shall be exempt from Tax. No activity of the Bank in the territory of Kazakhstan in connection with any matter covered by this Agreement shall, of itself, render the Bank or its assets subject to Tax.

**ARTICLE 4
Currency Convertibility and Transfer of Funds**

Throughout the life of any financial operation concluded pursuant to Article 2 of this Agreement, Kazakhstan shall:

- (a) make it possible: (i) for Beneficiaries to convert into any fully convertible currency, at the then-current market exchange rate, the amounts in the national currency of Kazakhstan necessary for the timely payment of all sums due to the Bank in respect of loans, guarantees and any holdings in the capital of undertakings in connection with any Project; and (ii) that such amounts to be freely, immediately and effectively transferable outside the territory of Kazakhstan so as to enable the Beneficiaries to meet their obligations to the Bank in accordance with the terms of the relevant contractual or other instrument;
- (b) make it possible: (i) for the Bank to convert into any fully convertible currency, at such then-current market exchange rate, the amounts in the national currency of Kazakhstan received by the Bank by way of payments arising in respect of loans, guarantees and holdings, or any other activity and that the Bank may freely, immediately and effectively transfer the amounts so converted outside the territory of Kazakhstan to such bank accounts as the Bank may freely determine; or, at the Bank's option, (ii) to freely dispose of such amounts within the territory of Kazakhstan;
- (c) make it possible for the Bank to convert into the national currency of Kazakhstan at the then-current market exchange rate, any amounts in any fully convertible currency.

**ARTICLE 5
Treatment of Projects**

Kazakhstan, to the extent within its power and authority, shall treat Projects, as well as contracts awarded for the execution thereof, in respect of fiscal, customs and other matters on a non-discriminatory basis, and treat them no less favourably than comparable projects or contracts financed and/or guaranteed by other international financial institutions.

Kazakhstan shall extend to each Project full and constant protection and security against expropriation and strife insofar as is necessary to preserve the capacity of the Project to generate income, which is available to service the debt incurred in connection with the Project.

**ARTICLE 6
Public Tendering**

The Bank may make its financing of Projects conditional upon the arrangements for participation in tenders and other competitive procedures for the award of contracts being in accordance with the Bank's rules and procedures in force from time to time.

**ARTICLE 7
Bank Status and Treatment**

The Bank shall enjoy full juridical personality in the territory of Kazakhstan, including in particular the capacity to contract, to acquire and dispose of movable and immovable property and to be party to legal proceedings.

The Bank shall enjoy, in respect of its activities in the territory of Kazakhstan, treatment at least as favourable as that accorded to any other international institution or, if more favourable, the treatment accorded under any relevant international agreement covering such activities.

In particular, the Bank shall have free access to the national financial market in Kazakhstan in accordance with the then applicable legislation of Kazakhstan and its obligations, securities and other comparable financial instruments shall be treated on terms, including, but not limited to, terms as to Tax treatment, no less favourable than those accorded by Kazakhstan, to comparable financial instruments of other international financial institutions.

ARTICLE 8

Bank Privileges and Immunities

- (1) The assets of the Bank shall be exempt:
 - (a) from search and all forms of expropriation;
 - (b) from the levy or imposition of any measure of execution or distraint prior to the award of a final, unappealable judgement against the Bank, rendered by a court of competent jurisdiction.

- (2) Representatives of the Bank, while they are engaged in activities connected with or in implementation of this Agreement, shall enjoy at least the following immunities and privileges:
 - (a) immunity from legal and administrative proceedings in respect of acts performed by them in their official capacity, except in cases where the Bank waives such immunity;
 - (b) diplomatic privileges and facilities accorded by Kazakhstan for official communications, for the transmission of documents and travel.

The immunities under Paragraph 2 of Article 8 shall not be applicable to the representatives of the Bank who are citizens of Kazakhstan.

This immunity, however, shall not apply to liability in case of injuries or death caused by the Bank's officials or employees.

ARTICLE 9

Settlement of Disputes over Activities of the Bank

In respect of any dispute arising between the Bank and a Beneficiary or any third party regarding the activities of the Bank envisaged by this Agreement, Kazakhstan undertakes to the extent provided under an applicable international treaty (to which Kazakhstan is a party) concerning the recognition and enforcement of judgments and arbitral awards in civil cases: (i) to ensure that the courts of Kazakhstan have the authority to recognise a final decision delivered by due process by a court or tribunal of competent jurisdiction, including the Court of Justice of the European Communities or any national court of a member state of the EC or any arbitration tribunal; and (ii) to ensure the execution of any such decision in accordance with its applicable national rules and procedures.

With regard to any dispute arising between Kazakhstan and the Bank in respect of the financing of a Project, acknowledged by Kazakhstan in accordance with Article 11 of this Agreement and to which Project Kazakhstan is a party (by providing guarantee, co-financing or otherwise), Kazakhstan hereby does not object to the jurisdiction of such competent court or tribunal, including the Court of Justice of the European Communities.

ARTICLE 10

Subrogation

The rights conferred on the Bank by this Agreement may be enjoyed and exercised (i) by the Bank both in its own name and, to the extent that the EC has made payment to the Bank in respect of any

guarantee or insurance concerning any loan, guarantee or other instrument concluded pursuant to this Agreement, as representative of the EC, or (ii) as the case may be, by the EC itself by virtue of a right of subrogation.

ARTICLE 11 **Co-operation**

Kazakhstan agrees to respond in writing within 60 days to requests made by the Bank for its acknowledgment that a Project financing proposal falls within the scope of the present Agreement. Both Kazakhstan and the Bank undertake to inform each other in a timely manner of any measure or proposed measure on their part, or of any other circumstance, such as may be reasonably expected to affect materially the rights and interests of the other party under the present Agreement.

ARTICLE 12 **Settlement of Disputes**

- (1) Any dispute, disagreement, controversy or claim (together referred to as a "Dispute") arising in connection with the existence, validity, interpretation, implementation or termination of this Agreement shall to the extent possible be settled amicably by agreement between Kazakhstan and the Bank.
- (2) If the dispute cannot be amicably settled by Kazakhstan and the Bank within 60 (sixty) days of the notification of the dispute by either of those parties, the dispute shall be settled by final and binding arbitration in accordance with the Permanent Court of Arbitration Rules for Voluntary Arbitration between International Organisations and States in effect at the date of this Agreement.
- (3) The number of arbitrators shall be three. The language of the arbitral procedure shall be English. The arbitration proceedings shall take place in the Hague, the Netherlands. The nominating authority shall be the Secretary-General of the Permanent Court of Arbitration.
- (4) Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within six months of the constitution of the arbitral tribunal. The tribunal shall render its decision within 60 (sixty) days following the delivery of the final submissions.
- (5) Kazakhstan hereby does not object to the arbitration proceedings and the decision of the arbitral tribunal in respect of any Dispute.

ARTICLE 13 **Entry into force**

This Agreement shall enter into force upon the day following the date on which the Bank confirms to the government of Kazakhstan its receipt of a certified copy of the latter's instrument of ratification or other instrument mutually agreed between Kazakhstan and the Bank, as well as of a legal opinion acceptable to the Bank as to the legal force of this Agreement.

ARTICLE 14 **Expiry**

This Agreement is concluded for an unlimited period of time.

The Bank may by a 6 months prior written notice to Kazakhstan terminate this Agreement or release Kazakhstan from all or any of its obligations under this Agreement. Unless otherwise stated, the giving of any such notice shall not affect the rights and interests acquired by the Bank in respect of Projects and financial operations outstanding at the date of the notice.

Kazakhstan may by a 6-month prior written notice to the Bank terminate this Agreement. The giving of any such notice shall not affect the rights and interests acquired by the Bank in respect of Projects and financial operations outstanding at the date of taking effect of such notice in the territory of Kazakhstan.

ARTICLE 15
Disclosure

Kazakhstan agrees that disclosure of this Agreement to Beneficiaries in respect of loans, guarantees or other instruments granted for Projects under this Agreement is authorised and will not violate any applicable regulation or ruling of any competent governing body.

ARTICLE 16
Address for Communications

The parties agree that any communication arising in the course of the operation of this Agreement may be addressed to their respective addresses set out as follows:

For Kazakhstan: 010000, Kazakhstan, Astana, 8 Orynbor Street, Ministry of Economic Development and Trade

For the Bank: 100, boulevard Konrad Adenauer, L-2950 Luxembourg

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed the present Agreement in three originals in the English language and in two originals in the Kazakh language and two originals in the Russian language having equal legal force, each page having been initialled by the undersigned or their representatives. In case of conflict, the English language shall prevail.

Done this 10th day of April 2010, at Brussels

Signed for and on behalf of:

THE REPUBLIC OF KAZAKHSTAN

EUROPEAN INVESTMENT BANK

Kanat SAUDABAYEV

Philippe MAYSTADT