

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOSOVO AND THE GOVERNMENT OF THE UNITED ARAB EMIRATES ON PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Republic of Kosovo and the Government of the United Arab Emirates, hereinafter referred to as "the Contracting Parties"

With the desire to intensify economic co-operation between the two States,

In order to encourage and create the conditions for investments made by investors of one Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefit, knowing that mutual promotion and protection of investment, on the basis of this joint Agreement, will stimulate the initiative and prosperity of business,

Have agreed as follows:

## **Article 1. Definitions**

For the purpose of this Agreement:

The term "investor" means:

- a) Physic persons who have the citizenship of the Republic of Kosovo or the United Arab Emirates, in accordance with their laws; and
- b) Legal entities of the Republic of Kosovo or of the United Arab Emirates, including corporations, commercial or other companies, associations, or any other entity that is incorporated or established in accordance with the law of the United Arab Emirates or the Republic of Kosovo and which is located, along with considerable economic activities in the territory of the United Arab Emirates or the Republic of Kosovo;

Who made or made an investment in the territory of the other Contracting Party.

2. The term "investment by an investor of a Contracting Party" means any asset / assets in the territory of one of the Contracting Parties, owned or controlled, directly or indirectly by an investor of the other Contracting Party, including:

- a) Movable and immovable property as well as what luck will be right for rem, such as mortgages, guarantees, commitments and similar rights;
- b) Shares and other forms of capital participation of a legal person, and the rights that come out of them;
- c) Bonds, debit notes, credits and other forms of debts and rights arising from this;
- d) Claims of money or any action that has economic value and is associated with one investment;
- e) Rights in the field of intellectual property, technical processes, goodwill and technical know-how;
- f) Any right, wright, whether legally or by an administrative act by the competent state authority or by contract.
- g) This Understanding will not include natural resources;

Any change in the form in which the assets / assets invested or reinvested do not have to affect their character as an investment, provided that such change is in accordance with laws and regulations of the Contracting Party in whose territory the investment is made.

3. The term "investment" shall be deemed not to include:

a) Pre-monetary claims arising out of commercial contracts for the sale of goods or services by a national or a company of a Contracting Party in the territory of the other Contracting Party;

b) Expansion of credit related to trade exchanges by a citizen or a company Contracting Party in the territory of that Contracting Party.

4. The term "returns" means the amounts obtained from investments and in particular, albeit not exclusively, include profits, dividends, interests, royalties or other forms of income related to investments, including other charges.

5. The term "territory" means:

a) As far as the UAE is concerned: when used in a geographic sense, means the territory of the United Arab Emirates under its sovereignty, as well as the territorial waters, airspace and suburbs in which the United Arab Emirates Arabs enjoy the rights of sovereignty and jurisdiction over any water, seabed, oil fields, in connection with the exploitation of natural resources through its law and international law.

b) With regard to the Republic of Kosovo: the territory over which it has jurisdiction or sovereignty, in accordance with the Constitution of the Republic of Kosovo and international law.

6. The term "laws and regulations" as to which Contracting Party means the laws and applicable regulations, in the Republic of Kosovo or in the United Arab Emirates.

## **Article 2. Promotion and Protection of Investments**

1. Each Contracting Party shall promote and encourage, from its territory, investments by investors of the other Contracting Party and shall accept such investments in its territory conforms to its laws and regulations.

2. Each Contracting Party shall accord, in the course of time, a fair and equal treatment of investments by investors of the other Contracting Party.

3. None of the Contracting Parties shall by no means undermine any unreasonable, arbitrary or discriminatory management, maintenance, use, unity or readiness of investments in its territory by investors of the other Contracting Party.

## **Article 3. Right to Regulate**

The Contracting Parties recognize the right of each of the Contracting Parties to adopt and take measures protection of health, social security and public order.

## **Article 4. National Treatment and Most Favored Nation Treatment**

1. Each Contracting Party shall accord to investors of Contracting Parties and investments a treatment less favorable than it accords to its own investors and their investments or investors in the state of affairs and their investments, in about the management, operation, maintenance, use, unification, selling and liquidation of an investment of any investor, whichever is the most favorable for the investor.

2. The provisions of this Article shall not be construed as affecting one Party Contractors to increase the benefits of any treatment, preference or privilege of investors to the other Contracting Party, or its investors, relying on:

a) Any current or future membership in a free market area, a customs union, a monetary union, a common market, an economic community or a sound investment agreement;

b) Any international agreement or domestic law relating to taxation;

c) The most favored nation should not be applied to any procedural or legal issue;

d) National treatment is governed by the law of the respective Contracting States.

## **Article 5. Transparency**

1. Each Contracting Party shall, as far as possible, publish or otherwise submit to it available to the public, laws, regulations, procedures, as well as the agreements international agreements that may affect the functioning of the Agreement.

2. No Contracting Party shall be required to provide or afford access to information that dealing with investors or investments, the disclosure of any of them may prevented the implementation of the law or would be in contradiction with its laws and regulations for the protection of confidentiality.

## **Article 6. Expropriation and Compensation**

1. Investments made by investors of any Contracting Party in the territory of the other Party Contracting parties are not expropriated, nationalized or subjected to other measures such as taxes excessive effects that have an effect on expropriation or nationalization (in the text on hereinafter referred to as "expropriation"), for a public purpose, on a non - discriminatory basis, in in accordance with the proper legal process and with fast compensation, efficient and proper.

2. The compensation referred to in paragraph 1 of this Article shall be calculated on the basis of the fair market value of the investment, immediately prior to the expropriation or expropriation announcement, whichever occurs earlier, the market value shall be based on the valuation principles internationally recognized.

3. The offsetting compensation is paid in an easily convertible currency and includes the three month Intermediate Bank of London Offering (LIBOR) interest, from expiration date to payment date, and is freely transferred and executed efficiently.

4. The investor whose investments are expropriated shall be entitled under the law of expropriation of the Contracting Party to a prompt review by a judicial authority or the competent authority of that Contracting Party of his case and the assessment of his investment in accordance with the principles as defined in this Article.

5. The movable and immovable property of the Government shall have immunity in the Contracting Party where it is imposed by any act, such as nationalization, sequestration, blocking, freezing or any act or measure having a similar effect.

6. The movable and immovable property of the Government shall not be subject to the aforementioned actions referred to in paragraph 5 of this Article at the request of any third party.

## **Article 7. Compensation for Losses**

1. Investors of a Contracting Party whose investments have suffered losses due to the war or any other armed conflict, revolution, rebellion, state of emergency, or any other negligence in the territory of the other Contracting Party shall be accorded by The other Contracting Party shall, in respect of the measures it has adopted in respect of such losses, including compensation, indemnification and indemnity, not less favorable than that accorded to it by its investors or investors of a third State.

2. An investor of a Contracting Party which, for any reason referred to in paragraph 1, incurs losses resulting from:

a) Destruction of its investments or a part thereof due to the forces or authorities of the other Contracting Party; or

b) Destruction of its investments or parts thereof due to the forces or authorities of the other Contracting Party, which has not been requested taking into account the situation,

In each case, the latter Contracting Party shall be entitled to compensation or compensation. which shall in each case be prompt, adequate and effective, and in respect of the compensation, shall be in accordance with Articles 2 to 4 of Article 6.

## **Article 8. Transfers**

1. Each Contracting Party shall allow the investors of the other Contracting Party the transfer freely within and outside its territory of funds associated with their investments and in particular, though not exclusively:

a) Capital and additional contributions for maintenance and development investment;

b) Returns;

c) Payments made under the contract, including credit agreements;

d) Proceeds from the sale or liquidation of all or any part of the investment;

e) Any compensation or other payment referred to in Articles 6 and 7 of this agreement;

f) Payments arising from the settlement of a dispute;

g) Profits and other staff payments that are engaged outside the country in connection with the investment;

h) Income, profits and other profits deriving from national air lines;

2. Transfers referred to in this Article are carried out without any conveyance or delay in currencies that are easily convertible.

3. Exchange of currency that is easily applicable for the execution of transfers under this Article shall be made at the market rate applicable on the date on which the transfer is effected on the basis of the exchange rules of the respective Contracting Party.

4. Notwithstanding paragraphs 1 to 3 of this Article, the Contracting Party may prohibit temporarily transferring through equitable, non-discriminatory and trusted enforcement of its law concerning:

a) Bankruptcy, insolvency or the protection of creditors' rights,

b) Broadcasting, trading or dealing with securities;

c) Criminal or criminal offenses;

d) Ensuring the fulfillment of orders or judgments in judicial proceedings,

Provided that such measures and their application are not used as a means of avoiding commitments or the obligations of the Contracting Party under the International Monetary Fund and this Agreement.

## **Article 9. Subrogation**

1. If a Contracting Party or its designated agency makes a payment to its investor under a security, warranty or security contract made in connection with a investment in the territory of the other Contracting Party. The other Contracting Party recognizes assignment to the previous Contracting Party or its designated agency rights and requirements of the investor and the right of the previous Contracting Party or its assigned agency for the exercise, based on the substitution of the right and such request to the same extent as its predecessor in the title.

2. Subrogation is made only after the written consent of the host country where investment has been made.

## **Article 10. Settlement of Disputes between a Contracting Party and the Investors of the other Contracting Party**

1. Disputes that may arise between a Contracting Party and an investor shall be settled amicably through negotiations, upon written request by an investor for the amicable settlement of a dispute. The host country is immediately affected by this request.

2. The Referral referred to above contains the following:

a) The name and address of the investor in the dispute and when the request is made by an investor of the Contracting Party on behalf of a legal person, the name and address of the legal person:

b) The provisions of this agreement that are alleged to have been violated and other relevant provisions;

c) Issues and grounds for the request; and

d) Targeted relief and amount of damages required.

3. If such dispute can not be overcome within a period of six (6) months from the date of the request for settlement, the concerned investor may, following written notice of his intention to submit the request to arbitration, file a dispute to one of the following, at the discretion of the investor:

a) The competent court or administrative tribunal of the Contracting Party;

b) Conciliation or arbitration established by:

i. Arbitration Rules of the United Nations Commission on the Law on International Trade (UNICTRAL);

ii. International Chamber of Commerce's Arbitration Rules (ICC);

iii. The Rules of the International Center for the Settlement of Investment Disputes (ICSID); established in the Convention on the Settlement of Investment Disputes between States and Citizens of Other States (ICSID Convention), opened for signature

at Washington, D.C., 18 March 1965;

c) Any other form of arbitration accorded between the investor and the host country of the dispute.

4. Each Contracting Party hereby gives its consent to the disputes concerning the investment for international reconciliation or arbitration. This consent implies the waiver of the requirement for exhaustion of internal administrative or judicial remedies.

5. The Contracting Party shall not claim as protection, claim for compensation or any other reason that any indemnity or other compensation for all or part of the damages is received or will be accepted on the basis of indemnification, guarantee or insurance contract.

6. The decision is binding and is not subject to any appeal or legal remedy other than those provided for in the ICSID Convention or the arbitration rules on which the arbitration proceedings are based on an investor, except if new facts or evidence have been discovered. The decision is subject to Articles 48, 49, 50, 51, 52, 53 and 54 to the ICSID Convention.

## **Article 11. Settlement of Disputes between Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall be, to the extent practicable, to negotiate amicably through negotiations through diplomatic channels.

2. If the Contracting Parties fail to reach a settlement within six (6) months after the commencement of the negotiations, the dispute shall, at the request of any Contracting Party, be submitted to the arbitral tribunal in accordance with the provisions of this Article.

3. Such arbitral tribunal shall be deemed to be in each case in this way. Within two (2) months of the receipt of the request for arbitration, each Contracting Party shall appoint a member of the tribunal. These two members then deploy a third-country national, with which both Contracting Parties have diplomatic relations, which, upon the approval of the two Contracting Parties, shall be appointed President of the Tribunal. The chairman is appointed within three (3) months from the date of appointment of the other two members.

4. If within the periods specified in paragraph 3 of this Article no necessary appointments have been made, whichever Contracting Party, in the absence of any agreement, may invite the President of the International Court of Justice to make the names of the members. If the President is a citizen of any of the Contracting Parties or otherwise obstructed in the exercise of the aforementioned function, then the Vice President is invited to make the necessary appointments. If the Vice President is a national of either Contracting Party or is prevented from exercising the above-mentioned function, a Member of the International Court of Justice who is next by rank, who is not a national of any of the Contracting Parties, is invited to make the necessary appointments.

5. The arbitral tribunal shall decide by majority of the votes. The decisions of the tribunal are final and binding for both Contracting Parties.

6. Each Contracting Party shall be liable for the costs of its member and its representation in arbitration proceedings. Both Contracting Parties assume equal shares of the President's costs as well as other costs. Indeed, the tribunal may determine in its decision another cost expense.

7. In all other respects, the tribunal shall determine its own rules of procedure, unless the parties decide otherwise.

## **Article 12. Implementation of the Agreement**

This Agreement shall apply to all investments made by a Contracting Party in the territory of the other Contracting Party, in accordance with its existing or existing laws and regulations adopted after June 20, 1999, but does not apply to any investment contingency that may have resulted after its entry into force.

## **Article 13. Denial of Benefits**

1. The benefits of this Agreement will not be available to:

i. An investor of a Contracting Party, if the main purpose of obtaining the nationality of that Contracting Party was to obtain benefits under this Agreement which would otherwise not be available to an investor; or

ii. A non-party investor who acquires ownership or control over an investment through citizenship planning where the investor has structured his investment through intermediary countries and that the non-party has no diplomatic relations

with the host country.

iii. Or the investor does not carry out significant business activities in the territory of the other Contracting Party.

2. Before denying the benefits of this Agreement, the Contracting Party shall notify and consult with the other Contracting Party of such denial of benefits.

## **Article 14. Performance Requirements**

1. None of the Contracting Parties may impose or impose any of the commitments or undertakings regarding the establishment, or expansion or management of one investing an investor in its territory:

a) To export a certain level or percentage of goods and services:

b) To achieve a certain level or percentage of local content;

c) Technology transfer.

2. Government procurement of goods and services is excluded from performance requirements.

## **Article 15. Consultations**

Each Contracting Party may propose holding consultations whenever it is necessary, over any matter affecting the implementation of this agreement. These consultations are kept in the place and time allocated through diplomatic channels.

## **Article 16. Entering Into Force and Duration**

1. This Agreement shall enter into force on the first day after the date of receipt of the latest diplomatic note confirming that the Contracting Parties have fulfilled the conditions laid down in the national legislation for the entry into force of this Agreement.

2. This Agreement shall be in force for a period of ten (10) years; this may be extended for an indefinite period and may be declared ineffective in writing through diplomatic channels by any Contracting Party by giving notice of twelve months.

3. With respect to investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 17 shall remain in force for a further period of ten (10) years from the date of this Agreement.

IN WITNESS WHEREOF, the undersigned, properly duly authorized, signatories have signed this Agreement.

Done in two copies in Pristina on 20 May 2016 in Albanian, Arabic, Serbian and English languages, all texts being equally authentic. In case of differences in interpretation, English text prevails.

For the Government of the Republic of Kosovo

For the Government of the United Arab Emirates