

AGREEMENT BETWEEN THE MACEDONIAN GOVERNMENT AND THE ITALIAN GOVERNMENT ON THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS

The Italian Government and the Macedonian Government (hereafter referred to as the Contracting Parties),

Desiring to establish favourable conditions for improved economic cooperation between the two Countries, and especially in relation to capital investment by investors of one Contracting Party in the territory of the other Contracting Party;

and

Acknowledging that offering encouragement and mutual protection to such investment, based on international agreements, will contribute to stimulating business ventures, which foster the prosperity of both Contracting Parties,

Hereby agree as follows;

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall be construed to mean any kind of property invested, by a natural or legal person of a Contracting Party in the territory of the other Contracting Party, in conformity with the laws and regulations of that Party, irrespective of the legal form chosen, as well as of the legal framework.

This term "investment" doesn't include claims under business transactions whose object is acquiring goods or services or credits, unless it concerns loans which, according to their aim and scope, have a form of participation (similar to loans for participation).

Without limiting the generality of the foregoing, the term "investment" comprises in particular, but not exclusively:

- a) Movable and immovable property and any ownership right in rem, including real guarantee rights on property of a Third Party, to the extent that it can be invested, such as mortgages, liens and pledges;
- b) Shares, bonds, share capital, as well as the government and other kinds of securities in general;
- c) Claims to money or any service right having an economic value connected with an investment, as well as reinvested incomes and capital gains;
- d) Copyright, commercial trade marks, patents, industrial designs and other intellectual and industrial property rights, Know-how, trade secrets, trade names and goodwill;
- e) Any economic rights accruing by law or by contract and any license and franchise granted in accordance with the provisions in force on economic activities, including the right to prospect for, extract and exploit natural resources;
- f) Any increases in value of the original investment.

Any modification in the form of the investment does not imply a change in the nature thereof.

2. The term "investor" shall be construed to mean any natural or legal person of a Contracting Party investing in the territory of the other Contracting Party as well as the foreign subsidiaries and affiliates and branch offices controlled in anyway by the above natural and legal persons.

3. The term "natural person", in reference to either Contracting Party, shall be construed to mean any natural person holding the nationality of that State in accordance with its laws.

4. The term "legal person", in reference to either Contracting Party, shall be construed to mean any entity having its head office in the territory of one of the Contracting Parties and recognized by it.
5. The term "income" shall be construed to mean the money accruing to an investment, including in particular profits or interests, interest income, capital gains, dividends, royalties or commissions, compensations for technical services, as well as any other form of payment either in money or in kind.
6. The term "territory" means:
 - a) For the Italian side: "the area encompassed by land boundaries, as well as air space and the sea, marine and submarine zones over which exercises, in accordance with its national laws and regulations and international law, sovereign rights or jurisdiction"
 - b) For the Macedonian side: "its land, air space, inland lake water and bottom over which it has jurisdiction or sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources, pursuant to internal jurisdiction and international law";
7. "Investment agreement" means an agreement between a Party (or its agencies or instrumentalities) and an Investor of the other Party concerning an investment.
8. "Nondiscriminatory treatment" means treatment that is at least as favourable as the better of national treatment or most-favoured-nation treatment.
9. "Right of access" means the right to be admitted to carry out investment in the territory of the other Contracting Party.

Article 2. Promotion and Protection of Investment

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory.
2. Investors of one of the Contracting Parties shall have the right of access to the investment activities, in the territory of the other Contracting Party, not less favourable than the one granted as per Article 3.1.
3. Both Contracting Parties shall at all times ensure just and fair treatment of the investments of investors of the other Contracting Party. Both Contracting Parties shall ensure that the management, maintenance, use, transformation, enjoyment or assignment of the investments effected in their territory by investors of the other Contracting Party, as well as companies and enterprises in which these investments have been effected, shall in no way be subject to unjustified or discriminatory measures.
4. Each Contracting Party shall create and maintain, in its territory a legal framework apt to guarantee to investors the continuity of legal treatment, including the compliance, in good faith, of all undertakings assumed with regard to each specific investor.

Article 3. National Treatment and the Most Favoured Nation Clause

1. Both Contracting Parties, within the bounds of their own territory, shall offer investments effected by, and the income accruing to, investors of the other Contracting Party no less favourable treatment than that accorded to investments effected by, and income accruing to, its own nationals or investors of Third States.
2. In case, from the legislation of one of the Contracting Parties, or from the international obligations in force or that may come into force in the future for one of the Contracting Parties, should come out a legal framework according to which the investors of the other Contracting Party would be granted a more favourable treatment than the one foreseen in this Agreement, the treatment granted to the investors of such other parties will apply to investors of the relevant Contracting Party also for the outstanding relationships.
3. The provisions under point 1 and 2 of this Article shall not be construed as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege which the former Contracting Party may grant to the investors of third States on the basis of:
 - (1) Membership in economic union, customs union, free trade zone, monetary union or similar international agreement establishing such unions or other forms of international cooperation to which either of the Contracting Parties is or may become a party, or

(2) Any international agreement or arrangement relating wholly or partially to avoidance of double taxation or facilitation of local border trade.

Article 4. Compensation for Damages or Losses

1. Should investors of one of the Contracting Parties incur losses or damages on their investments in the territory of the other Contracting Party due to war, other forms of armed conflict, a state of emergency, civil strife or other similar events, the Contracting Party in which the investment has been effected shall offer adequate compensation in respect of such losses or damages. Irrespective whether such losses or damages have been caused by governmental forces or other subjects. Compensation payments shall be freely transferable without undue delay.

The investors concerned shall receive the same treatment as the nationals of the other Contracting Party and, at all events, no less favourable than that of investors of Third States.

Article 5. Nationalization of Expropriation

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization (hereinafter referred to as "expropriation") in the territory of the Contracting Party, except in the public interest. The expropriation shall be carried out under due process of law, on a non-discriminatory basis, against adequate compensation which shall be effected without undue delay. Such compensation shall correspond to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became of public knowledge, whichever is earlier, shall include interest calculated until the date of payment, shall be made without undue delay and be freely transferable.

2. In case that the subject of nationalization or expropriation or similar is a joint venture, the investment of the investor shall be evaluated in the currency it was invested.

Compensation shall be considered just and fair if it is paid in the currency in which a foreign investor realized the investment, or in any other currency accepted by the investor.

Compensation shall be made without undue delay, within the term not longer than 3 months from the date decision was made about its value.

Compensation shall include interest calculated on the six-months LIBOR basis, from the date of nationalization or expropriation till the date of payment effected.

3. The investor affected shall have a right, under the laws and regulations of the Contracting Party making the expropriation, to prompt review of his or its case by a judicial or other independent authority of that Contracting Party and to the evaluation of his or its investments in accordance with the principles set out in this Article.

4. If the investor and the competent body cannot reach an agreement, the amount of compensation shall be determined according to procedure for settlement of disputes according to Article 9 of the Agreement.

Compensation shall be freely transferable.

5. In case that a Contracting Party and the investor cannot reach an agreement during nationalization or expropriation, compensation shall be based on the same parameters and exchange rates taken into consideration in the documents for starting with the investment. Exchange rate applied to such compensation shall be the rate prevailing on the date immediately before the announcement of nationalization or expropriation.

6. If the expropriated property, either completely or partially, does not serve the anticipated purpose in public interest, according to decision on expropriation based on law, the expropriated owner and his or its assignee are entitled to buy back that property at the market value.

Article 6. Repatriation of Capital, Profits and Income

1. Each of the Contracting Parties shall guarantee that the investors of the other may transfer the following abroad, without undue delay, in any convertible currency:

- a) Capital and additional capital, including reinvested income, used to maintain and increase investment;
- b) The net income, dividends, royalties, payments for assistance and technical services, interests and other profits;

- c) Income deriving from the total or partial sale or the total or partial liquidation of an investment;
- d) Funds to repay loans connected to an investment and the payment of the related interests;
- e) Remuneration and allowances paid to nationals of the other Contracting Party for work and services performed in relation to an investment effected in the territory of the other Contracting Party, in the amount and manner prescribed by the national legislation and regulations in force.

2. Without restricting the scope of Article 3 of this Agreement, the Contracting Parties undertake to apply to the transfers mentioned in paragraph 1 of this Article the same favourable treatment that is accorded to investments effected by investors of Third States, in case it is more favourable.

Article 7. Subrogation

In the event that one Contracting Party or an Institution thereof has provided a guarantee in respect of non-commercial risks for the investment effected by one of its investors in the territory of the other Contracting Party, and has effected payment to said investor on the basis of that guarantee, the other Contracting Party shall recognize the assignment of the rights of the investor to the first-named Contracting Party. In relation to the transfer of payments to the Contracting Party or its Institution by virtue of this assignment, the provisions of Article 4, 5 and 6 of this Agreement shall apply.

Article 8. Transfer Procedures

1. All the transfers, referred to in Articles 4, 6 and 7, shall be made in a convertible currency at the official exchange rate of the day of transfer, provided that the transfer takes place during the five working days after the date of application.
2. Any transfer shall be effected after all fiscal obligations have been met.

These fiscal obligations are deemed to be complied with when the investor has fulfilled the proceedings provided for by the law of the Contracting Party on the territory of which the investment has been carried out.

Article 9. Settlement of Disputes between Investors and Contracting Parties

1. Any dispute which may arise between one of the Contracting Parties and the investors of the other Contracting Party on investments, including disputes, relating to the amount of compensation, shall be settled amicably, as far as possible.
2. In case the Investor and one entity of one of the Parties have stipulated an investment agreement, the procedure foreseen in such investment agreement shall apply.
3. In the event that such dispute cannot be settled amicably, or in the framework of an investment agreement, within six months of the date of the written application for settlement, the investor in question may submit at his choice the dispute for settlement to:
 - a) The Contracting Party's Court having territorial jurisdiction;
 - b) An ad hoc Arbitration Tribunal, in compliance with the arbitration regulation of the UN Commission on the International Trade Law (UNCITRAL); and the host Contracting Party undertakes hereby to accept the reference to said arbitration.
 - c) The International Centre for Settlement of Investment Disputes, for the implementation of the arbitration procedures under the Washington Convention of 18 March, 1965, on the settlement of investment disputes between States and nationals of other States, if or as soon as both the Contracting Parties have acceded to it.
4. Both Contracting Parties shall refrain from negotiating through diplomatic channels any matter relating to an arbitration procedure or judicial procedures underway until these procedures have been concluded, and one of the Contracting Parties has failed to comply with the ruling of the Arbitration Tribunal of the Court of law within the period envisaged by the ruling, or else within the period which can be determined on the basis of the international or domestic law provisions which can be applied to the case.

Article 10. Settlement of Disputes between the Contracting Parties

1. Any dispute which may arise between the Contracting Parties relating to the interpretation and application of this Agreement shall, as far as possible, be settled amicably through diplomatic channels.

2. In the event that the dispute cannot be settled within six months of the date on which one of the Contracting Parties notifies, in writing, the other Contracting Party, the dispute shall, at the request of one of the Contracting Parties, be laid before an ad hoc Arbitration Tribunal as provided in this Article.

3. The Arbitration Tribunal shall be constituted in the following manner: within two months from the moment on which the request for arbitration is received, each of the two Contracting Parties shall appoint a member of the Tribunal. The President shall be appointed within three months of the date on which the other two members are appointed.

4. If, within the period specified in paragraph 3. of this Article, the appointments have not been made, each of the two Contracting Parties can, in default of other arrangement, ask the President of the International Court of Justice to make the appointment. In the event that the President of the Court is a national of one of the Contracting Parties or it is, for any reason, impossible for him to make the appointment, the application shall be made to the Vice-President of the Court. If the Vice-President of the Court is a national of one of the Contracting Parties, or is unable to make the appointment for any reason, the most senior member of the International Court of Justice, who is not a national of one of the Contracting Parties, shall be invited to make the appointment.

5. The Arbitration Tribunal shall rule with a majority vote, and its decisions shall be binding. Both Contracting Parties shall pay the costs of their own arbitration and of their representative at the hearings. The President's costs and any other cost shall be divided equally between the Contracting Parties.

The Arbitration Tribunal shall lay down its own procedures.

Article 11. Relations between Governments

The provisions of this Agreement shall be applied irrespective of whether or not the Contracting Parties have diplomatic or consular relations.

Article 12. Application of other Provisions

1. If a matter is governed both by this Agreement and by another International Agreement to which both Contracting Parties are signatories, or by general international law provisions, the most favourable provisions shall be applied to the Contracting Parties and to the their investors.

2. Whenever the treatment accorded by one Contracting Party to the investors of the other Contracting Party, according to its laws and regulations or other provisions or specific contract or investment authorizations or agreement, is more favourable than that provided under this agreement, the most favourable treatment shall apply.

In case the host Contracting Party has not applied such treatment, in conformity with the above, and the Investor suffers a damage as a consequence thereof, the Investors shall be entitled to a compensation of such damages in conformity with Article 4.

3. Whenever, after the date when the investment has been made, a modification should take place in laws, regulations, acts or measures of economic policies governing directly or indirectly the investment, the same treatment will apply upon request of the investor that was applicable to it at the moment when the investment had been carried out.

Article 13. Entry Into Force

This Agreement shall become effective as from the date in which the two Contracting Parties notify each other that their respective constitutional procedures have been completed.

Article 14. Application of the Agreement

This Agreement is also valid for investments that investors of one Contracting Party have done in accordance with the regulations of the other Contracting Party in its territory before the entering into force of this Agreement. It will not be applied to disputes that happened before the entering into force of the present Agreement.

Article 15. Duration and Expiry

1. This Agreement shall remain effective for a period of 10 years from the date of the notification under Article 13 and shall remain in force for a further period of 10 years thereafter, save if one of the Contracting Parties withdraws in writing by not later than one year before its expiry date.

2. In the case of investments effected prior to the expiry dates, as provided under paragraph 1 of this Article, the provisions of the Articles 1 to 12 shall remain effective for a further ten years after the aforementioned dates.

DONE IN Skopje, the day of the twenty six of February one thousand nine hundred and ninety seven, in two originals, in Macedonian, Italian and English languages, each text being equally authentic.

In case of any divergence, the English text shall prevail.

FOR THE MACEDONIAN GOVERNMENT

Minister of Foreign Affairs

Dr Ljubomir Frcjovski

FOR THE ITALIAN GOVERNMENT

State Undersecretary for Foreign Affairs

Piero Fassino

Protocol

The Contracting Parties, also agreed to the following clauses, which form an integral part of the Agreement.

1. With Reference to Article 1:

Provisions of this Agreement will be applied also to all activities in connection with investments.

These activities comprise particularly, but not exclusively: organization, control, operation, maintenance and disposition of companies, branches, agencies, offices, factories or other facilities for conduct of business; acquisition, use, protection and disposition of property of all kinds, including intellectual property; borrowing of funds; purchase, issuance and sale of equity shares and other securities; and purchase of foreign exchange for imports.

2. With Reference to Article 2:

a) Each Contracting Party will provide effective means of asserting claims and for enforcing rights with respect to investments and with investment agreements.

b) In accordance with its own laws and provisions, each Contracting Party, as favourable as possible will regulate questions concerning entrance, stay and movement of nationals of one Contracting Party, undertaking activities in connection with the investments in the territory of the other Contracting Party and members of their families.

c) Legal entities, constituted in accordance with the applicable laws and regulations of one Contracting Party, shall be permitted to engage top managerial personnel of their choice, regardless of nationality, in accordance with the legislature of the host Contracting Party.

3. With Reference to Article 3:

All activities relating to the procurement, sale and transport of raw and processed materials, energy, fuel and means for production, as well as other kind of operations related to the stated activities or with investment activities under this Agreement, on the territory of each Contracting Party, shall be accorded no less favourable treatment than that accorded to similar activities and initiatives taken by own investors or investors of Third countries.

4. With Reference to Article 5:

Any measure undertaken with respect to the investment limiting the financial resources or other means creating remarkable loss to the same investment, undertaken in public interest, will be treated as one of the measures stated in paragraph 1 of the Article 5.

5. With Reference to Article 9:

Under Article 9 (3) (b), arbitration shall be conducted in accordance with the arbitration standards of the United Nations Commission on International Trade Law (UNCITRAL), as well as in accordance with the following provisions:

a) The Arbitration Tribunal shall be composed of three arbitrators; if they are not nationals of either Contracting Party, they shall be nationals of the state having diplomatic relations with both Contracting Parties.

The appointment of the arbitrators, when necessary, pursuant to the UNCITRAL Rules, shall be done by the President of the Arbitration Institute of the Stockholm Chamber, in his capacity as appoint authority. The arbitration will take place in Stockholm, unless the two Contracting Parties have agreed otherwise.

b) When delivering its decision, the Arbitration Tribunal shall apply also provisions contained in this Agreement, as well as the principles of the international law recognized by both Contracting Parties.

The recognition and implementation of the arbitration decision in the territory of both Contracting Parties shall be governed by their respective national legislations, in compliance with the relevant international conventions they are parties to.

IN WITNESS WHEREOF, the undersigned, being duly authorized there to by their respective Governments, have signed the present protocol.

DONE IN Skopje, the day of the twenty six of February one thousand nine hundred and ninety seven, in two originals, in Macedonian, Italian and English languages, each text being equally authentic.

In case of any divergence, the English text shall prevail.

FOR THE MACEDONIAN GOVERNMENT

Minister of Foreign Affairs

Dr Ljubomir Frcjovski

FOR THE ITALIAN GOVERNMENT

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Piero A. Fassino