

AGREEMENT between the Republic of Austria and the Republic of Macedonia on the Promotion and Protection of Investments

THE REPUBLIC OF AUSTRIA AND THE REPUBLIC OF MACEDONIA hereinafter referred to as "Contracting Parties";

DESIRING to create favourable conditions for greater economic co-operation between the Contracting Parties;

RECOGNIZING that the promotion and protection of investments may strengthen the readiness for such investments and hereby make an important contribution to the development of economic relations;

REAFFIRMING their commitment to the observance of internationally recognized labour standards;

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purpose of this Agreement

(1) "investor of a Contracting Party" means:

- a) A natural person having the nationality of a Contracting Party in accordance with its applicable law; and
- b) A legal person, including corporations, companies, associations or any other entities which are incorporated or constituted in accordance with the law of that Contracting Party

Making or having made an investment in the other Contracting Party's territory.

(2) "investment by an investor of a Contracting Party" means every kind of asset in the territory of one Contracting Party, owned or controlled, directly or indirectly, by an investor of the other Contracting Party, and in particular, though not exclusively, includes:

- a) Shares in, stocks and debentures of a company and any other form of participation in a company and rights derived therefrom;
- b) Claims to money and claims to performance having an economic value and connected with an investment;
- c) Copyrights, trade marks, patents or other intellectual or industrial property rights, technical processes, know-how and goodwill;
- d) Any right whether conferred by law or by contract, including turnkey contracts, concessions, licenses, authorisations or permits to undertake an economic activity;
- e) Any movable or immovable property, or any related property rights, such as leases, mortgages, liens, pledges or servitudes.

(3) "returns" means the amounts yielded by an investment and, in particular, profits, interests, capital gains, dividends, royalties and any other fees.

(4) "without delay" means such period as is normally required for the completion of necessary formalities for the payments of compensation or for the transfer of payments. This period shall commence for payments of compensation on the day of expropriation and for transfers of payments on the day on which the request for transfer has been submitted. It shall in no case exceed 60 days.

(5) "territory" means with respect to each Contracting Party the land territory, internal waters and airspace over which the Contracting Party exercises, in conformity with international law, sovereign rights and jurisdiction.

Article 2. Promotion and Admission of Investments

(1) Each Contracting Party shall, according to its laws and regulations, promote and admit investments by investors of the other Contracting Party.

(2) Any alteration of the form in which assets are invested or reinvested shall not affect their character as an investment provided that such alteration is in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

Article 3. Treatment and Protection of Investments

(1) Each Contracting Party shall accord to investments by investors of the other Contracting Party fair and equitable treatment and full and constant protection and security.

(2) A Contracting Party shall not impair by unreasonable or discriminatory measures the management, operation, maintenance, use, enjoyment, sale and liquidation of an investment by investors of the other Contracting Party.

(3) Each Contracting Party shall accord to investors of the other Contracting Party and to their investments treatment no less favourable than that it accords to its own investors and their investments or to investors of any third country and their investments with respect to the management, operation, maintenance, use, enjoyment, sale and liquidation of an investment, whichever is more favourable to the investor.

(4) No provision of this Agreement shall be construed as to oblige a Contracting Party to extend to the investors of the other Contracting Party and to their investments the present or future benefit of any treatment, preference or privilege resulting from:

a) Any membership in a free trade area, customs union, common market, economic community or any multilateral agreement on investment, or

b) Any international agreement, international arrangement or domestic legislation regarding taxation.

Article 4. Transparency

(1) Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, procedures as well as international agreements which may affect the operation of the Agreement.

(2) Each Contracting Party shall promptly respond to specific questions and provide, upon request, information to the other Contracting Party on matters referred to in paragraph (1).

(3) No Contracting Party shall be required to furnish or allow access to information concerning particular investors or investments the disclosure of which would impede law enforcement or would be contrary to its laws and regulations protecting confidentiality.

Article 5. Expropriation and Compensation

(1) A Contracting Party shall not expropriate or nationalise directly or indirectly an investment of an investor of the other Contracting Party or take any measures having equivalent effect (hereinafter referred to as "expropriation") except:

a) For a purpose which is in the public interest,

b) On a non-discriminatory basis,

c) In accordance with due process of law, and

d) Accompanied by payment of prompt, adequate and effective compensation in accordance with paragraphs (2) and (3) below.

(2) Compensation shall:

a) Be equivalent to the fair market value of the expropriated investment immediately before the expropriation occurred. The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier.

b) Be made freely transferable to the country designated by the claimants concerned and in the currency in which the investment was made or in any freely convertible currency accepted by the claimants.

c) Be made without delay. In case of delay, the compensation shall be paid in an amount that puts the investor in a position no less favourable than the position in which he would have been had the compensation been paid immediately on the date of expropriation. In order to achieve this goal the compensation shall include interest at the prevailing commercial rate, however in no case less than the current LIBOR rate or equivalent from the date of expropriation until the date of actual payment.

(3) The investor whose investment was expropriated shall have the right under the law of the expropriating Contracting Party to prompt review by a judicial or other competent authority of that Contracting Party of its case and of the valuation of the investment in accordance with the principles set out in this Article.

Article 6. Compensation for Losses

(1) An investor of a Contracting Party which has suffered a loss relating to its investment in the territory of the other Contracting Party due to war or to other armed conflict, state of emergency, revolution, insurrection, civil disturbance, or any other similar event, or acts of God or force majeure, in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or any other settlement, treatment no less favourable than that which it accords to its own investors or to investors of any third state, whichever is more favourable to the investor.

(2) An investor of a Contracting Party who in any of the events referred to in paragraph (1) suffers loss resulting from:

- a) Requisitioning of its investment or part thereof by the forces or authorities of the other Contracting Party, or
- b) Destruction of its investment or part thereof by the forces or authorities of the other Contracting Party, which was not required by the necessity of the situation,

Shall in any case be accorded by the latter Contracting Party restitution or compensation which in either case shall be prompt, adequate and effective. Resulting payments should be freely transferable.

Article 7. Transfers

(1) Each Contracting Party shall guarantee that all payments relating to an investment by an investor of the other Contracting Party may be freely transferred into and out of its territory without delay. Such transfers shall include, in particular:

- a) The initial capital and additional amounts to maintain or increase an investment;
- b) Returns;
- c) Payments made under a contract including a loan agreement;
- d) Proceeds from the sale or liquidation of all or any part of an investment;
- e) Payments of compensation under Articles 5 and 6; Articles 5 and 6;
- f) Payments arising out of the settlement of a dispute;
- g) Earnings and other remuneration of personnel engaged from abroad in connection with an investment.

(2) Each Contracting Party shall further guarantee that such transfers may be made in a freely convertible currency at the market rate of exchange prevailing on the date of transfer in the territory of the Contracting Party from which the transfer is made.

(3) In the absence of a market for foreign exchange, the rate to be used shall be the most recent exchange rate for conversion of currencies into Special Drawing Rights, if applicable.

(4) Notwithstanding paragraphs (1) to (3), a Contracting Party may prevent a transfer through the equitable, non-discriminatory and good faith application of measures to protect the rights of creditors, relating to or ensuring compliance with laws and regulations on the issuing, trading and dealing in securities, futures and derivatives, reports or records of transfer, or in connection with criminal offences and orders or judgements in administrative and adjudicatory proceedings, provided that measures and their application shall not be used as a means of avoiding the Contracting Party's commitments

or obligations under this Agreement.

Article 8. Subrogation

If a Contracting Party or its designated agency makes a payment under a guarantee or contract of insurance given in respect of an investment by an investor in the territory of the other Contracting Party, the latter Contracting Party shall recognize without prejudice to the rights of the investor under Chapter Two Part One the assignment of any right or claim of such an investor to the former Contracting Party or its designated agency and the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right and claim to the same extent as its predecessor in title.

Article 9. Other Obligations

Each Contracting Party shall observe any obligation it may have entered into with regard to specific investments by investors of the other Contracting Party.

Article 10. Denial of Benefits

A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party and to its investments, if investors of a Non-Contracting Party own or control the first mentioned investor and that investor has no substantial business activity in the territory of the Contracting Party under whose law it is constituted or organized.

Chapter Two : Dispute Settlement

Part One : Settlement of Disputes between an Investor and a Contracting Party

Article 11. Scope

This Part applies to disputes between a Contracting Party and an investor of the other Contracting Party concerning an alleged breach of an obligation of the former under this Agreement which causes loss or damage to the investor or its investment.

Article 12. Means of Settlement, Time Periods

(1) Such a dispute should, if possible, be settled within three months by negotiation or consultation. If it is not so settled, the investor may choose to submit it for resolution:

- a) To the competent courts or administrative tribunals of the Contracting Party, party to the dispute; or
- b) In accordance with any applicable previously agreed dispute settlement procedure; or
- c) In accordance with this Article to:
 - i) The Convention on the Settlement of Investment Disputes between States and Nationals of other States ("the ICSID Convention"), if the Contracting Party of the investor and the Contracting Party, party to the dispute, are both parties to the ICSID Convention; or
 - ii) Rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre, if the Contracting Party of the investor or the Contracting Party, party to the dispute, but not both, is a party to the ICSID Convention; or
 - iii) A sole arbitrator or an ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL"); or
 - iv) The International Chamber of Commerce, by a sole arbitrator or an ad hoc tribunal under its rules of arbitration.

(2) A dispute may be submitted for resolution pursuant to paragraph (1) c) of this Article after three months from the date of notice of intent to do so was provided to the Contracting Party, party to the dispute, but not later than five years from the date the investor first acquired or should have acquired knowledge of the events which gave rise to the dispute.

Article 13. Contracting Party Consent

(1) Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration in accordance with this Part.

(2) The consent referred to in paragraph (1) of this Article implies the renunciation of the requirement that the internal administrative or juridical remedies should be exhausted.

(3) The investor may choose to submit the dispute for resolution according to Article 12 paragraph (1) c) only as long as there is no decision in the first instance in the proceedings according to Article 12 paragraph (1) a).

Article 14. Place of Arbitration

Any arbitration under this Part shall, at the request of any party to the dispute, be held in a State that is party of the New York Convention. Claims submitted to arbitration under this Part shall be considered to arise out of a commercial relationship or transaction for purposes of Article 1 of the New York Convention.

Article 15. Indemnification

A Contracting Party shall not assert as a defence, counter-claim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to a guarantee or insurance contract.

Article 16. Applicable Law

(1) A tribunal established under this Part shall decide the dispute in accordance with this Agreement and applicable rules and principles of international law.

(2) Issues in dispute under Article 9 shall be decided, absent other Agreement, in accordance with the law of the Contracting Party, party to the dispute, the law governing the authorisation or agreement and such rules of international law as may be applicable.

Article 17. Awards and Enforcement

(1) Arbitration awards shall be final and binding upon the parties to the dispute.

(2) Each Contracting Party shall make provision for the effective enforcement of awards made pursuant to this Article and shall carry out without delay any such award issued in a proceeding to which it is party.

Part Two : Settlement of Disputes between the Contracting Parties

Article 18. Scope, Consultations, Mediation and Conciliation

Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled amicably or through consultations, mediation or conciliation.

Article 19. Initiation of Proceedings

(1) At the request of either Contracting Party a dispute concerning the interpretation or application of this Agreement may be submitted to an arbitral tribunal for decision not earlier than three months after such request has been notified to the other Contracting Party.

(2) A Contracting Party may not initiate proceedings under this Part for a dispute regarding the infringement of rights of an investor which that investor has submitted to arbitration under Chapter Two Part One of this Agreement, unless the other Contracting Party has failed to abide by and comply with the award rendered in that dispute or those proceedings have terminated without resolution by an arbitral tribunal of the investor's claim.

Article 20. Formation of the Tribunal

(1) The arbitral tribunal shall be constituted ad hoc as follows:

Within 30 days after receipt of a request for arbitration, the parties to the dispute shall appoint by agreement three

members of the tribunal and designate one of them as chairman who shall be a national of a third State which maintains diplomatic relations with both Contracting Parties. Except for compelling reasons, the members shall be persons proposed by the Secretary General of ICSID.

(2) If the period specified in paragraph (1) of this Article is not observed, either Contracting Party may, in the absence of any other agreement, invite the Secretary General of ICSID to make the necessary appointments.

(3) Members of an arbitral tribunal shall be independent and impartial.

Article 21. Applicable Law

The arbitral tribunal will decide disputes in accordance with this Agreement and the applicable rules and principles of international law.

Article 22. Awards

The arbitration award shall be final and binding upon the parties to the dispute.

Article 23. Costs

Each Party shall pay the cost of its representation in the proceedings. The cost of the tribunal shall be paid for equally by the parties unless the tribunal directs that they be shared differently.

Article 24. Rules of Procedure

In all other respects, the tribunal shall define its own rules of procedure, unless the Contracting Parties decide otherwise.

Article 25. Enforcement

Pecuniary awards which have not been complied with within one year from the date of the award may be enforced in the courts of either Contracting Party with jurisdiction over assets of the defaulting Party.

Chapter Three : Final Provisions

Article 26. Application of the Agreement

The present Agreement shall apply to investments made in the territory of one Contracting Party in accordance with its legislation by investors of the other Contracting Party prior to as well as after the entry into force of the present Agreement, but shall not apply to investments which are subject of a dispute settlement procedure under the Agreement between the Republic of Austria and the Socialist Federal Republic of Yugoslavia on the Promotion and Protection of Investments signed on 25 October 1989 which shall continue to apply to them until the settlement of dispute is reached.

Article 27. Consultations

Each Contracting Party may propose to the other Contracting Party consultations on any matter relating to this Agreement. These consultations shall be held at a place and at a time agreed upon through diplomatic channels.

Article 28. Entry Into Force and Duration

(1) The Contracting Parties shall notify each other when the conditions required by the national legislation for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force sixty days after the date of the latter notification.

(2) This Agreement shall remain in force for a period of ten years. It shall be extended thereafter for an indefinite period and may be denounced in writing through diplomatic channels by either Contracting Party giving twelve months' notice.

(3) In respect of investments made prior to the date of termination of the present Agreement the provisions of Articles 1 to 27 of the present Agreement shall continue to be effective for a further period of ten years from the date of termination of the present Agreement.

(4) On the date of entry into force of the present Agreement, the Agreement between the Republic of Austria and the Socialist Federal Republic of Yugoslavia on the Promotion and Protection of Investments signed on 25 October 1989 shall be terminated, except for investments which are subject of a dispute settlement procedure as stipulated in Article 26 of the present Agreement.

For the Republic of Austria:

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For the Republic of Macedonia:

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