

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MACEDONIA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of Macedonia and the Government of the People's Republic of China (hereinafter referred to as the Contracting Parties),

Intending to create favorable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the reciprocal encouragement, promotion and protection of such investments will be conducive to the stimulation of business initiative of the investors and will increase prosperity in both States;

Desiring to intensify the economic cooperation of both States on the basis of equality and mutual benefits;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement

1. The term "investment" means every kind of asset invested by investors of one Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter, and in particular, though not exclusively, includes:

(a) movable, immovable property and other property rights such as mortgages and pledges;

(b) shares, stock and any other kind of participation;

(c) claims to money or to any other performance having an economic value;

(d) copyrights, industrial property, know-how and goodwill;

(e) concessions conferred by law or under contract permitted by law, including concessions to search for or, cultivate, extract or exploit natural resources.

2. The term "investors" means, with regard to either Contracting Party

(a) any natural persons who have nationality of that Contracting Party in accordance with its laws;

(b) any legal person, including companies, organizations and associations, incorporated or established in accordance with the laws and regulations of that Contracting Party and domiciled in the territory of that Contracting Party;

3. The term "return" means the amounts yielded by investments, such as profits, dividends, capital gains, interests, royalties or other income.

4. Any change in the form in which assets are invested does not affect

Their character as investments. *

5. The term "territory" means the territory of each Contracting Party as defined in its laws and the adjacent areas over which each, Contracting Party exercises sovereign rights or jurisdiction in accordance with international law.

Article 2. Promotion, Admission and Protection of Investments

1. Each Contracting Party shall promote investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its laws and regulations.
2. Each Contracting Party shall grant assistance in and provide facilities for obtaining visa and working permit to nationals of the other Contracting Party to or in the territory of the former in connection with activities associated with such investments.
3. Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other - Contracting Party. Each Contracting Party agrees that, without prejudice to its laws and regulations, it shall not take any unreasonable or discriminatory measures against the management, maintenance, use, enjoyment or disposal, extension, liquidation of investments in its territory of investors of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investment of investors of the other Contracting Party.

Article 3. Treatment of Investments

1. Neither Contracting Party shall, in its territory, subject investments or -returns of investors of the other Contracting Party to treatment less favorable than which it accords to investments or returns of investors of any third State.
2. Neither Contracting Party shall, in its territory, subject investors of the other Contracting Party, as regards their management, use, enjoyment or disposal, extension, liquidation of their investments, to treatment less favorable than that which it accords to investors of any third State.
3. In addition to the provisions of paragraphs 1 and 2 of this Article, either Contracting Party shall, to the extent possible, accord treatment in accordance with /the stipulations of its laws and regulations to the investments of investors of the other Contracting Party the same as that accorded to its own investors. * *
4. The provisions of paragraphs 1 to 3 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege of investors of a third State based on customs union, free trade zone, economic union, agreement relating to avoidance of double taxation or for facilitating frontier trade.

Article 4. Expropriation

Investments of investors of either Contracting Party shall not be expropriated, nationalized or subject to measures having effect equivalent to expropriation or nationalization (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose related to the internal needs of that Contracting Party in accordance with the domestic legal procedure and against reasonable compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the impending expropriation or before the impending expropriation became public knowledge, shall include interest calculated on the annual LIBOR basis from the date of expropriation till the date of payment, shall be made without undue delay, and shall be effectively realizable and freely transferable. In such case, the delay starts by the submission of a relevant application and must not exceed six months.

Article 5. Compensation for Losses

Investors of one Contracting Party whose investment in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection, or not in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, if any, no less favorable than that which the latter Contracting

Party accords to investors of any third State. Resulting payments shall be freely transferable.

Article 6. Transfer

1. Each Contracting Party shall, subject to its laws and regulations, grant investors of the other Contracting Party the transfer of their investments and returns held in the territory of the other Contracting Party, including:

- (a) capital and additional funds necessary for maintenance and development of an investment;
- (b) capital gains, profits, dividends, interests and other income;

- (c) proceeds from a total or partial sale or liquidation of an investment;
- (d) payment made pursuant to a loan agreement in connection with investments;
- (e) royalties and fees;
- (f) payments in connection with projects on contract;
- (g) earnings of nationals of the other Contracting Party whose work is related to an investment in the territory of the one Contracting Party;
- (h) compensations in Article 4 and 5 of this Agreement.

2. The transfers mentioned above shall be made at the official exchange rate of the Contracting Party accepting the investment on the date of transfer, provided that all financial obligations towards the Contracting Party have been fulfilled.

Article 7. Subrogation

If a Contracting Party or its Agency makes payment to an investor under a guarantee it has granted to an investment of such investor in the territory of the other Contracting Party, such other Contracting Party shall recognize the transfer of any right or claim of such investor to the former Contracting Party or its Agency and recognize the subrogation of the former Contracting Party or its Agency to such right or claim. The subrogated right or claim shall not be greater than the original right or claim of the said investor.

Article 8. Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by consultation through diplomatic channel.
2. If a dispute cannot thus be settled within six months, it shall, upon the Request of either Contracting Party, be submitted to an ad hoc arbitral tribunal. "
3. Such tribunal comprises of three arbitrators. Within two months from the date on which either Contracting Party receives the written notice requesting for arbitration from the other Contracting Party, each Contracting Party shall appoint one arbitrator. Those two arbitrators shall, within the next two months, together select a third arbitrator who is national of a third State which has diplomatic relations with both Contracting Parties. The third arbitrator shall be appointed by the two Contracting Parties as Chairman of the arbitral tribunal.
4. If the arbitral tribunal has not been constituted within four months from the date of the receipt of the written notice for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator(s) who has or have not yet been appointed. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the next most senior member of the International Court of Justice who is not a national of either Contracting Party shall be invited to make the necessary appointment(s).
5. The arbitral tribunal shall determine its own procedure. The tribunal shall reach its decision in accordance with the provisions of this Agreement and the principles of international law recognized by both Contracting Parties.
6. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties. The ad hoc arbitral tribunal shall, upon the request of either Contracting Party, explain the reasons of its decision.
7. Each Contracting Party, shall bear the cost of its appointed arbitrator and of its representation in the arbitral proceedings. The relevant costs of the Chairman and the tribunal shall be borne in equal parts by the Contracting Parties.

Article 9. Disputes between an Investor and a Contracting Party

1. My dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.
2. If the dispute cannot be settled through negotiations within six months, either party to the dispute shall be entitled to submit the dispute to the competent court of the Contracting Party accepting the investment.

3. If a dispute involves the amount of compensation for expropriation cannot be settled within six months after resort to negotiations as specified in paragraph 1 of this Article, it may be submitted at the request of either party to the International Center for Settlement of Investment Disputes (ICSID) or to an ad hoc arbitral tribunal. The provisions of this paragraph shall, not apply if the investor concerned has resorted to the procedure specified in the paragraph 2 of this Article.

4. Such an arbitral tribunal shall be constituted for each individual case in the following way: each party to the dispute shall appoint an arbitrator, and these two shall select a national of a third State which has diplomatic relations with the two Contracting Parties as Chairman. The first two arbitrators shall be appointed within two months from the date of submission of the written notice for arbitration by either party to the dispute to the other, and the Chairman be selected within four months. If within the period specified above, the tribunal has not been constituted, either party to the dispute may invite the Secretary General of the International Center for Settlement of Investment Disputes to make the necessary appointments. If the Secretary General is a national of either Contracting Party or is otherwise prevented from discharging the said function, the next most senior member of the International Center for Settlement of Investment Disputes who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The tribunal shall determine its own procedure. However, the tribunal may, in the course of determination of procedure, take as guidance the Arbitration Rules of the International Center for Settlement of Investment Disputes.

6. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both parties to the dispute. Both Contracting Parties shall commit themselves to the enforcement of the * decision in accordance with their respective domestic law.

7. The decision shall be made in accordance with the law of the Contracting Party to the dispute accepting the investment including its rules on the conflict of laws, the provisions of this Agreement as well as the generally recognized principles of international law accepted by both Contracting Parties.

8. Each party to the dispute shall bear the cost of its appointed member of the tribunal and of its representation in the proceedings. The cost of the appointed Chairman and the remaining costs shall be borne in equal parts by the parties to the dispute.

Article 10. Other Obligations

If the treatment to be accorded by one Contracting Party in accordance with its laws and regulations to investments or activities associated with such investments of investors of the other Contracting Party is more favorable than the treatment provided for in this agreement, the more favorable treatment shall be applied.

Article 11. Application of this Agreement

This Agreement shall apply to investments which are made prior to or after its entry into force by investors of either Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter.

Article 12. Consultation

1. The representatives of the two Contracting Parties shall hold meetings from time to time for the purpose of:

- (a) reviewing the implementation of this Agreement;
- (b) exchanging legal information and investment opportunities;
- (c) resolving dispute arising out of investments;
- (d) forwarding proposals on promotion of investment;
- (e) studying other issues in connection with investments.

2. Where either Contracting Party requests consultation on any matters of paragraph* 1 of this Article, the other Contracting Party shall give prompt response and the consultation be held alternately in Beijing and Skopje.

Article 13. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the first day of the month following the date on which both Contracting Parties have notified each other in writing that their respective internal legal procedures have been fulfilled, and shall remain in

force for a period of ten years.

2. This Agreement shall continue in force if either Contracting Party fails to give a written notice to the other Contracting Party' to terminate this Agreement one year before the expiration specified in paragraph 1 of this Article.

3. After the expiration of the initial ten year period, either Contracting Party may at any time thereafter terminate this Agreement by giving at least one year in advance a written notice to the other Contracting Party.

4. With respect to investment made prior to the date of termination of this Agreement, the provisions of Article 1 to 12 shall continue to be effective for a further period of ten years from such date of termination.

In witness whereof, the duly authorized, representatives of their respective Governments have signed this Agreement.

Done in duplicate at Beijing on June 9, 1997 in the Macedonian,

Chinese and English languages, all texts being equally authentic. In case of

Divergence of interpretation, the English text shall prevail.

For the Government of For the Government of

The Republic of the People's Republic of China

Macedonia

ZLATKA POPOVSKA

LIU I SHANCAI