

Agreement between the Republic of Serbia and On Reciprocal Promotion And Protection Of Investments

The Republic of Serbia and..... (hereinafter referred to as the Contracting Parties),

DESIRING to promote growing economic cooperation in relation to investments by nationals or companies of one Contracting Party on the territory of the other Contracting Party,

CONSIDERING that the Agreement will stimulate the flow of capital and economic development of the Contracting Parties,

BELIVING that the promotion of investment will contribute to economic growth and sustainable development of the Contracting Parties,

RECOGNIZING that these objectives can be achieved without compromising recognized international rights of workers, health, safety and environment,

Have agreed as follows:

Article 1. Definitions

For the Purposes of this Agreement:

1. The term "investment" shall mean every kind of assets directly invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter and in particular, though not exclusively, shall include:

- a) movable and immovable property and any other rights in rem such as mortgages, liens, pledges, usufructs and other;
- b) shares in companies, equity stocks as well as other kinds of securities with right of participation in companies;
- c) claims to money, related with an investment, under loan contract with a duration period of payment more than 5 years, in a form of subordinate claims;
- d) intellectual property rights (such as copyrights and related rights, patents, industrial designs or models, trade marks) as well as goodwill, technical processes and know-how;
- e) Public private partnership concluded in accordance with the laws and regulations of the Contracting Party in the territory whereof the investment is being made, including concessions to search for cultivate, extract or exploit natural resources.

but "investment" does not mean

f) claim to money that arise solely from:

- (a) commercial contracts, for sale of goods or services by investors in the territory of one Contracting Party to nationals or companies in the territory of the other Contracting Party, or
- (b) the extension of credit in connection with a commercial transaction, referred to in subparagraph (a) of this Article; or
- g) any other form of investment that is not directed at gaining economic and other commercial benefit.

A change in the form in which assets are invested shall not affect their character as investments.

2. The term "investor" shall mean:

- a) a natural person having the nationality of one Contracting Party and making investments in the territory of the other Contracting Party provided that the person is not a citizen of the other Contracting Party;

b) a natural person who is a dual citizen of the Republic of Serbia and ____ shall be deemed to be exclusively a national of the Contracting Party in which he have permanent or temporary resident for a period longer than one year;

c) a legal entity constituted or otherwise duly organized in accordance with the laws and regulations of one Contracting Party with its headquarters and substantial business activity in the territory of that Contracting Party, investing in the territory of the other Contracting Party provided it is not directly or indirectly majority owned by citizens of that Contracting Party.

3. The term "revenues" shall mean the amounts yielded by an investment and in particular, though not exclusively, includes profit, capital gains, dividends and interests arising from investments, royalties and similar fees.

4. The term "territory" shall mean:

a) Concerning the Republic of Serbia:

The area over which the Republic of Serbia exercises sovereign rights and jurisdiction, in accordance with its national laws and regulations and international law;

b) Concerning ____ ;

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory, and shall admit such investments in accordance with its applicable regulations and this Agreement.

2. Investments of investors of each Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in the territory of the other Contracting Party.

3. Violation of the fair and equitable treatment obligation arises in the following cases: a) denial of justice in criminal, civil or administrative proceedings; b) fundamental breach of due process in judicial and administrative proceedings; c) manifest arbitrariness; d) targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief; e) abusive treatment of investors, such as coercion, duress and harassment.

4. Full protection and security treatment referred to in paragraph 2 of this Agreement does not cover protection against changes of laws and regulations.

5. Each Contracting Party shall create favorable conditions for the granting of visa and work permits required in its territory in order that the nationals of the other Contracting Party can perform their activities connected to the investment.

6. Reinvestment of a profit gained from an investment performed in accordance with law of a Contracting Party in which territory initial investment had been performed, shall enjoy the same protection as well as the initial investment.

Article 3. National Treatment and Most-Favoured-Nation Treatment

1. Each Contracting Party shall in its territory accord investments of the other Contracting Party with equal treatment that it accords to investments of its own investors or to investments of investors of any third State, whichever is the more favorable.

2. Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, treatment equally favorable that it accords to its own investors or to investors of any third State, whichever is more favorable.

3. The provisions of paragraphs 1 and 2 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 which the former Contracting Party may grant to any third State pursuant to: a) any agreement on membership in economic union, customs union, free trade zone, monetary union or similar international agreement establishing such unions or other forms of regional cooperation, or b) any international agreement or arrangement relating wholly or partially to taxation.

4. The provisions of paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to be submitted to any other mechanism of dispute settlement with investor of other Contracting Party except those explicitly provided in the Article 14 of this Agreement.

Article 4. Compensation for Losses

1. Investors of one Contracting Party whose investments 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 riot 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, equally favorable that which the latter Contracting Party accords to its own investors or to investors of any third State.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

- a) requisition of their property by the authorities of the other Contracting Party, or
- b) destruction of their property by the authorities of the other Contracting Party,

which was not caused in combat action or was not required by the necessity of the situation, shall be, without delay, provided fair and adequate compensation for the losses suffered during the requisition or resulting from the destruction of their properties.

Article 6. Expropriation

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to any other measure having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except in public purpose, prescribed by the law or in accordance with the law of that Contracting Party. The expropriation shall be carried out under due process of law, on a non-discriminatory basis and with adequate compensation which shall be effected without undue delay.

2. Such compensation shall correspond to the market value of the expropriated investment immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier and shall include adequate legal interest calculated until the date of payment.

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

4. Expropriation arising from a measure or a series of measures of a Contracting Party without formal transfer of title or outright seizure (hereinafter referred to as "indirect expropriation") has an effect equivalent to direct expropriation. The determination of whether a measure or a series of measures of a Contracting Party constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

- a) the economic impact of those measures, although the sole fact that a measure or a series of measures of a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred,
- b) the extent to which the measures interferes with distinct, reasonable investment-backed expectations, and
- c) the character of these measures;

5. Except in rare circumstances, measure or a series of measures of a Contracting Party designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, does not constitute indirect expropriation.

Article 6. Transfers

1. Each Contracting Party shall, upon payment of all fiscal obligations of investors of the other Contracting Party, guarantee to the investors of the other Contracting Party, free transfers of amounts to money related to their investments including in particular, though not exclusively:

- a) invested capital and additional amounts to maintain or increase investments;
- b) profit, dividends, interest, capital gains, royalties and other amounts arising from direct investment;
- c) repayments resulting from loans granted to the companies for duration time of payment more than 5 years;
- d) proceeds from total or partial liquidation or sale of the covered investment;

e) compensation according to Articles 4 and 5 of this Agreement;

f) payments arising out of a settlement of a dispute, according to Article 14 of this Agreement;

g) earnings of investor's employees that are nationals of one Contracting Party working out in connection with the investment in the territory of the other Contracting Party.

2. Transfers of payments referred to in paragraph 1 of this Article shall be made without undue delay, in convertible currency, in which the capital was originally invested or in any other convertible currency agreed by the investor and _ the Contracting Party concerned. Transfer shall be made at the official exchange rate applicable on the date of transfer in the territory of the Contracting Party where the investment has been made.

3. Notwithstanding paragraphs 1 and 2, a Contracting Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its domestic law relating to:

a) bankruptcy, liquidation or the protection of the rights of a creditor;

b) issuing, trading or dealing in securities;

c) a criminal or penal offence;

d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or

e) ensuring compliance with an order or judgment in judicial or administrative proceedings.

4. A Contracting Party may not require one of its investors to transfer, or penalize for failing to transfer, the income, earnings, profits or other amounts derived from, or attributable to, an investment in the territory of the other Contracting Party.

5. Paragraph 4 does not prevent a Contracting Party from imposing a measure through the equitable, non-discriminatory and good faith application of its domestic law relating to the matters in subparagraphs 3 a) through d).

6. Notwithstanding the provisions of paragraphs 1, 2 and 4, and without limiting the applicability of paragraph 5, a Contracting Party may prevent or limit transfers by a financial institution to, or for the benefit of, an affiliate of or person related to that institution, through the equitable, non-discriminatory and good faith application of a measure relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions.

Article 7. Temporary Security Measures

1. Obligations under Article 6 of this Agreement does not prevent Contracting Party from adopting or maintaining measures:

a) in the case of serious disturbances of balance of payments and external financial difficulties or for overcome them;

b) in the case where, in exceptional circumstances, movements of capital or its implementation, could cause serious difficulties for macroeconomic management, and at least partial implementation of monetary and foreign exchange policies.

2. The measures referred to in paragraph 1 of this Article:

a) shall be in accordance with provisions of the Agreement on membership in International Monetary Fund;

b) shall not excide the amount necessary to overcome the circumstances specified in paragraph 1 of this Article;

c) shall be temporary and will cease as soon as conditions permit and shall immediately be notified to the other Contracting Party

3. The rights and obligations of the Contracting Party deriving from its membership at the International Monetary Fund This Article Shall Not In Any Way Be Reduced by the Provisions of this Article..

Article 8. Subrogation

1. If one Contracting Party or its designated Agency makes a payment resulting from compensation of losses to its own investors under a guarantee given in respect of an investment in the territory of the other Contracting Party, the other Contracting Party shall recognize:

- a) subrogation of all rights and claims of the indemnified investor which occurs either by law or by legal transaction, and
 - b) that the first Contracting Party or its authorized Agency is, based on subrogation, entitled to exercise such rights and enforce such claims to the extent as the indemnified investor, and shall assume the obligations pertaining to the investments.
2. The rights or claims so subrogated the first Contracting Party shall not exceed the original rights or claims of the investor.
 3. Subrogation of the rights and obligations of the indemnified investor shall also apply to the transfer of payments effected in accordance with Article 6 of this Agreement.

Article 9. Health, Safety and Environmental Measures

The Contracting Parties Recognize That It Is Inappropriate to Encourage Investment by Relaxing Domestic Health, Safety or Environmental Measures. Accordingly, a Contracting Party Should Not Waive or Otherwise Derogate from or Offer to Waive or Otherwise Derogate from Those Measures to Encourage The establishment, acquisition, expansion or retention of an investment of an investor in its territory.

Article 10. Corporate Social Responsibility

Each Contracting Party should encourage enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate internationally recognized standards of corporate social responsibility in their practices and internal policies, such as statements of principle that have been endorsed or are supported by the Parties. These principles address issues such as labor, the environment, human rights, community relations and anti-corruption.

Article 11. General Exceptions

1. This Agreement does not prevent a Contracting Party from adopting or maintaining reasonable measures, such as:
 - a) protecting investors, depositors, financial market participants, policy-holders or persons to whom a fiduciary duty is owed by a financial institution;
 - b) maintaining the safety, solvency, integrity or financial responsibility of financial institutions; and
 - c) ensuring the integrity and stability of a Contracting Party's financial system.
2. This Agreement does not apply to non-discriminatory measures of general application taken by a public entity in pursuit of monetary, foreign exchange and credit policies or exchange rate policy.
3. This Agreement does not:
 - a) require a Contracting Party to furnish or allow access to information if that Contracting Party determines that the disclosure of this information would be contrary to its essential security interests;
 - b) prevent a Contracting Party from taking an action that it considers necessary to protect its essential security interests:
 - 1) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment,
 - 2) taken in time of war or other emergency in international relations, or
 - 3) relating to the implementation of national policies or international agreements respecting the non- proliferation of nuclear weapons or other nuclear explosive devices; or
 - c) prevent a Party from fulfilling its obligations under the United Nations Charter for the maintenance of international peace and security.
4. This Agreement does not require a Contracting Party to furnish or allow access to information which if disclosed would impede law enforcement or would be contrary to the Contracting Party's law protecting the deliberative and policy-making processes of the executive branch of government, personal privacy or the confidentiality of the financial affairs and accounts of individual customers of financial institutions.
5. In the course of a dispute settlement procedure under this Agreement:

- a) a Contracting Party is not required to furnish or allow access to information protected under its competition law;
- b) a Contracting Party is not required to furnish or allow access to information that is privileged or protected from disclosure.

Article 12. Denial of Benefits

Each Contracting Party may deny the benefits of this Agreement to an investor, defined in Article 3, of the other Contracting Party and to investments of that investor if investors of a third country or of the Contracting Party to which benefit is denied own or control that investment and:

- a) the denying Contracting Party does not maintain diplomatic relations with that country;
- b) the denying Contracting Party adopts or maintains measures that prohibit transactions with that investor; or
- c) the investor has no substantial business activities in the territory of the other Contracting Party.

Article 13. Settlement of Disputes between the Contracting Parties

1. Disputes arising between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled, as far as possible, by consultations and negotiations.

2. If a dispute between the Contracting Parties cannot thus be settled within six months from the date of the commencement of negotiations, it shall, upon the request of either Contracting Party be referred to an arbitration tribunal.

3. The arbitration tribunal referred to in paragraph 2 of this Article Shall Be Constituted on an Ad Hoc Basis for Each individual case in the following way: within three months as of receipt of the request for arbitration each Contracting Party shall appoint one arbitrator. Within two months these two arbitrators shall select the third arbitrator - a third country national who on approval by the two Contracting Parties shall be appointed Chairman of the arbitration tribunal.

4. If the arbitration tribunal is not set up within the periods specified in paragraph 3 of this Article, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice President of the International Court of Justice shall be invited to make the necessary appointments. If the Vice President of the International Court of Justice is a national of either Contracting Party, or if he too is prevented from discharging the said function, each Contracting Party may request that the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party makes the necessary appointments.

5. The arbitration tribunal shall decide on the basis of the provisions of this Agreement as well as of the generally accepted principles and rules of international law. The arbitration tribunal shall decide by a majority vote. Its awards shall be final and binding on both Contracting Parties.

6. Each Contracting Party shall bear the costs of its own arbitrator and of its representation in the arbitration proceedings. The costs of the Chairman and the remaining expenses shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

Article 14. Settlement of Disputes between an Investor and the Host State

1. Disputes between an investor of one Contracting Party and the other Contracting Party concerning an obligation of the latter under this Agreement relating to an investment of the former shall be settled, as far as possible through negotiations.

2. If the dispute referred to in paragraph 1 of this Article cannot be settled by negotiations within six months from written notification of the claim, either party to the dispute may submit the dispute for settlement to:

- a) a competent court of the Contracting Party in whose territory investment has been made; or
- b) an ad hoc arbitral tribunal composed of three arbitrators, established in accordance to the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or
- c) the International Center for the Settlement of Investment Disputes, in the event that both Contracting Parties are parties to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for

signature at Washington DC on 18 March 1965; or

d) Court of Arbitration composed of three members, of the International Chamber of Commerce (ICC), with the place of arbitration in the territory of the respondent.

3. If the investor from one Contracting Party and the other Contracting Party or its agency or a legal entity owned or controlled by the State concluded investment agreement which provides dispute settlement procedure, for the disputes originate from that agreement, that procedure shall be applied exclusively.

4. The investor from one Contracting Party loses his right to proceed before court or arbitration in accordance with paragraph 2 of this Article, in case of subrogation, according to the Article 8 of this Agreement.

5. Investor from the Contracting Party claiming to suffered losses as the result of expropriation may proceed to the arbitration provided by paragraph 2, item b) through d), only if he previously proceeded before the court of other authorized body of the other Contracting Party in accordance with paragraph 3 of Article 5 of this Agreement and the Court or the other authorized body did not deliver award related to his claim within a period of 18 months from the proceeding.

6. The arbitral award delivered in accordance with paragraph 2 of this Article shall be final and binding on both parties to the dispute and each Contracting Party shall provide its enforcement in its territory.

Article 15. Application of other Provisions

1. If the laws of either Contracting Party or international agreements existing at present or established hereafter between the Contracting Parties or other international agreements whereof the Contracting Parties are signatories contain provisions entitling investments by investors of the other Contracting Party to a treatment more favorable than is provided for by the present Agreement, such laws and agreements shall to the extent that they are more favorable prevail over the present Agreement.

2. The provisions of this Article shall not be construed so as to oblige one Contracting Party to be submitted to any other mechanism of dispute settlement with investor of other Contracting Party except those explicitly provided in the Article 14 of this Agreement.

Article 16. Consultations

Representatives of the Contracting Parties shall hold consultations, when necessary, concerning matters related to the application of this Agreement. These consultations shall be held at the proposal of one Contracting Party, at the time and place to be agreed upon through diplomatic channels.

Article 17. Application of the Agreement

The provisions of this Agreement shall apply to investments realized by investors of one Contracting Party on the territory of the other Contracting Party and shall be applicable from the date of its entry into force, but it shall not apply to any dispute concerning an investment which arose, or any claim, which was settled before entry into force of this Agreement.

Article 18. Entry Into Force, Duration and Termination of the Agreement

1. Each Contracting Party will notify in writing the other Contracting Party about the completion of internal constitutional procedures for entering into force of this Agreement. The present Agreement shall enter into force on the date of the receipt of the second of the two notifications.

2. This Agreement is concluded for a period of ten years and shall thereafter be automatically extended for successive periods of five years unless either Contracting Party notifies to the other Contracting Party in writing its decision to terminate the Agreement at least twelve months prior to its date of expiry.

3. With respect to investments made prior to the date of termination of this Agreement, articles of this Agreement shall remain in force for a further period of ten years.

IN WITNESS WHEREOF the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done at this day of in two originals in the Serbian, and the English languages, each text being equally authentic. In the event of any divergence in interpretation of the authentic texts, the English text shall prevail.

FOR THE REPUBLIC OF SERBIA

FOR