

AGREEMENT BETWEEN THE COUNCIL OF MINISTERS OF THE REPUBLIC OF ALBANIA AND THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Council of Ministers of the Republic of Albania and the Government of the Republic of Moldova hereinafter referred to as the "Contracting Parties",

Desiring to encourage and intensify their economic cooperation to the mutual benefit of both States on a long-term basis,

Having as their objectives to create and maintain favorable conditions for investments by investors of either Contracting Party in the territory of the other Contracting Party,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1. The term Investment means every kind of asset and in particular, though not exclusively, includes:

- a) movable and immovable property and any other property rights such as mortgages, liens or pledges;
- b) shares in, stocks, debentures and any other form of participation in companies;
- c) claims to money or to any performance having an economic value or contract, a: as loans connected to an investment;
- d) intellectual and industrial property rights, patents, trade marks, technical proc<

Know-how, goodwill and any other similar rights, recognized by the laws of the Contracting Parties;

e) business concessions conferred by public law of each Contracting Party, inch concessions to search, extract or exploit natural resources, cultivate, as well as rights given by law, and

f) goods that, under a leasing agreement, are placed at the disposal of a lessee i territory of a Contracting Party, in conformity with its laws and regulations,

A possible change in the form in which the investments or reinvestments have been shall not affect their character as investments.

2. The term Returns means the any material or financial means, yielded by an invest and in particular, though not exclusively, includes profits, interest, capital f dividends, royalties and fees.

3. The term Investor means:

a) In respect of the Republic of Albania:

(i) Natural persons having their status as the Republic of Albania citizei accordance with the law in force in the Republic of Albania;

(ii) Legal persons or any other legal entity incorporated, constituted or otherwise organized under the applicable law of the Republic of Albania, as w< individual entrepreneurs, having its seat and performing real business activ the territory of the Republic of Albania.

b) In respect of the Republic of Moldova:

(i) Natural persons having their status as the Republic of Moldova citizens in accordance with the law in force in the Republic of Moldova;

(ii) Legal persons or any other legal entity incorporated, constituted or otherwise organized under the applicable law of the Republic of Moldova, as well as individual entrepreneurs, having its seat and performing real business activities on the territory of the Republic of Moldova.

4. The term "Territory" means:

a) With respect to the Republic of Albania: the territory under the sovereignty of the Republic of Albania, including the territorial waters, as well as the maritime continental shelf over which the Republic of Albania exercises, in accordance with its national laws and regulations and international law, its sovereign rights.

b) With respect to the Republic of Moldova: geographical area composed by subsoil, waters and air-space over the soil and territorial waters, under which the Republic of Moldova exercises its sovereign rights and jurisdiction, in accordance with its legislation and international law.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party promotes in its territory investments by investors of the Contracting Party and admits such investments in accordance with its legislative regulations.

2. Investments by investors of a Contracting Party shall, at all times, be accorded equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Each Contracting Party shall ensure that the maintenance, use, enjoyment or disposal, in its territory, of investments of the Contracting Party, is not in any way impaired by unjustifiable or discriminatory measures.

3. Returns from the investments and, in cases of reinvestment, the income therefrom, shall enjoy the same protection as the initial investments.

4. Each Contracting Party shall observe any other obligation with regard to investments of the other Contracting Party.

Article 3. Treatment of Investments

1. Each Contracting Party shall accord to investments, made in its territory by investors of the other Contracting Party, treatment not less favourable than which it accords to investments of its own investors or to investments of investors of any third State, whichever is more favourable.

2. Each Contracting Party shall accord to investors of the other Contracting Party, regarding their activity in connection with investments in its territory, treatment not less favourable than that which it accords to its own investors or to investors of a State, whichever is more favourable.

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 investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

a) its participation in any existing or future customs union, economic union, regional economic integration agreement or similar international agreement, or

b) any international agreement or arrangement relating wholly or mainly to taxation.

Article 4. Expropriation

1. Investments by investors of either Contracting Party in the territory of the other Contracting Party, shall not be expropriated, or subjected to any other measure, having effect equivalent to expropriation (hereinafter referred to as "expropriation"), except in the national security interest, on a non-discriminatory basis and against payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment affected immediately before the actual measure was taken or became public knowledge, whichever is the earlier, it shall include interest from the date of expropriation until the date of payment at a normal commercial rate and shall be freely transferable in a freely convertible currency.

2. The provisions of paragraph 1 of this Article shall also apply where a Contracting Party expropriates the assets of a company which is constituted under the laws in force in any part of its territory and in which investors of the other Contracting Party own shares.

Article 5. Compensation for Losses

Investors of either Contracting Party who suffer losses including damages in respect of their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable to the investors of the other Contracting Party.

Article 6. Repatriation of Investments and Returns

1. Each Contracting Party shall guarantee, in respect of investments of the other Contracting Party, after the fulfillment of its fiscal obligations, the unrestricted transfer

Of the investment and its returns. The transfers shall be effected without delay, in convertible currency, at the market rate of exchange applicable on the date of transfer

2. Such transfers shall include in particular, though not exclusively:

- a) capital and additional amounts to maintain or increase the investment;
- b) profits, interest, dividends and other current income;
- c) funds in repayment of loans, related to an investment;
- c) royalties and fees;
- d) proceeds from the total or partial sale or liquidation of an investment;
- e) compensation under Articles 4 and 5 of this Agreement.

Article 7. Subrogation

1. If the investments of an investor of one Contracting Party in the territory of the other Contracting Party are insured against non-commercial risks under a legal system guarantee, any subrogation of the insurer into the rights of the said investor pursuant to the terms of such insurance shall be recognized by the other Contracting Party, to the prejudice of the rights of the investor under Article 9 of this Agreement.

2. The insurer shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise.

3. Disputes between a Contracting Party and the insurer shall be tried in accordance with the provisions of Article 9 of this Agreement.

Article 8. Settlement of Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled by negotiations, through diplomatic channels.

2. If the dispute cannot thus be settled within six months from the beginning of negotiations, it shall, upon request of either Contracting Party be submitted to an arbitration tribunal.

3. The arbitration tribunal shall be constituted ad-hoc, as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third State as chairman. The arbitrators shall be appointed within three months of the date on which either Contracting Party

informs the other Contracting Party that it intends to submit the dispute to an arbitration tribunal.

4. If within the period specified in paragraph 3 of this Article the necessary appointments have not been made, 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 Court is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President or if he is also a national of either Contracting Party or is otherwise prevented from discharging the said function, the Member of the Court next in seniority, who is not a national of either Contracting Party, shall be invited to make the necessary appointments.

5. The arbitration tribunal shall decide in respect with the law, including particularly thi: Agreement and other relevant agreements between the Contracting Parties, as well a: principles of international law.

6. Unless the Contracting Parties decide otherwise, the tribunal shall determine its owi procedure.

7. The tribunal shall reach its decision by a majority of votes. Such decision shall be fim and binding on the Contracting Parties.

8. Each Contracting Party shall bear the cost of the arbitrator appointed by itself and of r representation. The cost of the chairman as well as the other costs will be borne in ecju parts by the Contracting Parties. The tribunal may, however, in its decision direct that higher proportion of costs shall be borne by one of the two Contracting Parties and th award shall be binding on both Contracting Parties.

Article 9. Settlement of Disputes between an Investor and a Contracting Party

1. Disputes between an investor of a Contracting Party and the other Contracting Pai concerning an obligation of the latter under this Agreement, in relation to an investmt of the former, shall, if possible, be settled amicably.

2. If such disputes cannot be settled within six months from the date that either pa requested amicable settlement, the investor concerned may submit the dispute either the competent courts of the Contracting Party in the territory of which the investm has been made or to international arbitration.

3. Where the dispute is referred to international arbitration, the investor concerned n submit the dispute either to:

a) the International Centre for the Settlement of Investment Disputes, established un the convention on the Settlement of Investment Disputes between States:

Nationals of Other States, opened for signature at Washington D. C. on 18 March 1965, for arbitration or conciliation, or

b) an ad-hoc arbitral tribunal to be established under the arbitration rules of the United Nations Commission on International Trade Law (U.N.C. I.T.R.A.L.).

4. The arbitral tribunal shall decide the disputes 'in accordance with the provisions of this Agreement and the applicable rules and principles of international law. The awards of arbitration shall be final and binding on both parties to the dispute. Each Contracting Party shall carry out without delay any such award and such award shall be enforced in accordance with domestic law.

5. During arbitration proceedings or the enforcement of the award, the Contracting Party involved in the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of the damage or loss.

Article 10. Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement, contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to treatment more favorable than is provided for by this Agreement, such regulation shall, to extent that is more favorable, prevail over this Agreement.

Article 11. Consultations

Representatives of the Contracting Parties shall, whenever necessary, hold consultations on any matter affecting the implementation of this Agreement. These consultations shall be held on the proposal of one of the Contracting Party at a place and time to be agreed upon through diplomatic channels.

Article 12. Application

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

Article 13. Entry Into Force - Duration - Termination

1. This Agreement shall enter into force after thirtieth day after the date on which the Contracting Parties have notified each

other regarding the completion of their internal procedures requiring for bringing the Agreement into force.

2. This Agreement shall remain in force for a period of ten years. Unless notice of termination has been given by either Contracting Party' at least one year before the date of expiry' of its validity, this Agreement shall thereafter be extended tacitly for periods of ten years, each Contracting Party reserving the right to terminate the Agreement upon notice of at least one year before the date of expiry of its current period of validity.

3. This Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall enter into force under the same procedure required for entering into force of the present Agreement

4. In respect of investments made prior to the date of termination of this Agreement, the foregoing Articles shall continue to be effective-for a further period of ten years from that date.

Done in duplicate at ... on ... in the Albanian, Moldavian and English languages, all texts being equally authentic.

In case of divergence of interpretation the English text shall prevail.

FOR THE COUNCIL OF MINISTERS OF THE REPUBLIC OF ALBANIA

FOR THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA