

AGREEMENT BETWEEN SERBIA AND MONTENEGRO AND THE GRAND SOCIALIST NATIONAL LIBYAN ARAB JAMAHIRIYA ON THE ESTABLISHMENT, GUARANTEEING AND SAFEGUARDING OF SETTLEMENTS

AGREEMENT

BETWEEN SERBIA AND MONTENEGRO

AND THE GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA

ON ENCOURAGING, GUARANTEE AND PROTECTION OF INVESTMENTS

Serbia and Montenegro and the Great Socialist People's Libyan Arab Jamahiriya (hereinafter referred to as "the Parties"),

In order to create favorable conditions for the development of mutual economic cooperation, especially investments made by investors of one Contracting Party in the territory of the other Contracting Party,

In order to create and maintain favorable conditions for mutual investment,

Convinced that the reciprocal encouragement, guarantee and protection of these investments contribute to the strengthening of economic cooperation between the two countries,

Su agreed to the following:

Article 1. Definitions

Under this Agreement, the following terms have the meaning:

1. "Investment": All types of funds that an investor of one Contracting Party has and invests in the territory of the other Contracting Party, in accordance with its laws and regulations and includes in particular, though not exclusively:

- a. Ownership of movable and immovable property and all other rights in rem, such as the presumption, mortgage, pledge or collateral;
- b. Stocks, bonds, and other types of securities and any other form of participation in the company;
- c. Monetary claims or any other claims arising from contracts which have an economic value associated with an investment;
- d. Intellectual property rights, such as copyrights and other related rights and industrial property rights such as patents, licenses, industrial designs or models, trademarks and goodwill, technical processes and know-how;
- e. All rights confirmed by law, contract, license or permit, including exploration, extraction and use of natural resources.

Any change of the form in which assets are invested or reinvested shall not affect their character as investments.

2. "Investor":

- a. A natural person who is a national of one Contracting Party in accordance with its laws;
- b. A legal entity founded, established or otherwise duly organized under the laws and regulations of one Contracting Party, which has its headquarters in the territory of that Party.

3. "Territory": In the case of Serbia and Montenegro and in the case of the Great Socialist People's Libyan Arab Jamahiriya: Area covered land borders, sea area, seabed and subsoil beyond the territorial waters which fall under the sovereign rights

and jurisdiction of the Parties in accordance with its national legislation and international law.

4. "Yields": The amount by an investment and includes profits, interest, dividends, capital gains, fees and all in this regard.

5. Freely convertible currency: Any currency that the International Monetary Fund defines as a free currency in accordance with Article Agreement of the International Monetary Fund and any amendment to it in connection that is used in international trade and is acceptable to the international market exchange rates.

6. Without delay: shall mean the period that is normally required for the fulfillment of the necessary formalities for the transfer of payments.

Article 2. Promotion and Protection of Investment

1. Each Party shall encourage and create favorable and transparent conditions for investors

The other Contracting Party to invest in its territory and admit such investments in its territory in accordance with its laws and regulations.

2. Each Party shall ensure at all times fair and equitable treatment of investments of investors of the other Party and their returns.

3. Investments of investors of each Contracting Party shall enjoy full legal protection and security in the territory of the other Party. Neither Party shall not, in any way, impose unreasonable or discriminatory measures that harm the management, maintenance, use, enjoyment or disposal investments of investors of the other Party in its territory. Each Party shall carry out any commitment with regard to investments of investors of the other Party.

Article 3. National Treatment and Most Favoured Nation Treatment

1. Investments made by investors of one Contracting Party in the territory of the other Party and yields in this regard, will enjoy treatment which is fair and equitable and not no less favorable than that which the other Contracting Party provides investments and returns of its own investors or investors of any third state.

2. Investors of one Contracting Party shall be guaranteed by the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investments treatment which is fair and equitable and not less favorable than that which the other Contracting Party grants to its own investors or investors of any third countries.

3. The provisions of this Article shall be construed to require either Party to investors of the other Party or investors given any preference in treatment, preferences or privileges that can be awarded, in the context of:

a Any existing or future membership in the economic or customs union, free trade area, common market, an international agreement or other form of regional economic organizations;

b Any bilateral or international agreements or arrangements which are in whole or in part to taxation.

Article 4. Special International Treaties and Agreements

Investments take place between the Contracting Parties under special international agreements or contracts will be subject to those agreements or contracts as long as they ensure better treatment than that provided by the provisions of this Agreement.

Article 5. Compensation of Losses

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer

Losses due to war or other armed conflict, state of emergency, revolt, insurrection or riots in the territory of the other Contracting Party, this will provide, in terms of fees, compensation, restitution or other means of settlement of losses, treatment no less favorable than that accorded other Party gives its own investors or investors of any third state. Payments on this basis shall be made in freely convertible currency and shall be freely transferable.

2. Without prejudice to the provisions of paragraph 1 of this Article, investors of one Contracting Party who, in any of the situations mentioned in that paragraph, suffer losses in the territory of the other Party, which are the result of:

a. Confiscation of property by the authorities of the other Party, or

b. Destruction of their property by the authorities of the other Party, which is not caused by combat operations, nor was necessary because of the situation, will be granted fair and adequate compensation.

Article 6. Free Transfer

1. Each Party shall guarantee to investors of the other Party, the free transfer payments to and from its territory in a freely convertible currency without delay and shall include in particular, though not exclusively:

- a. Share capital and any additional capital for the maintenance, management or increase investments;
- b. Offerings;
- c. Funds in repayment of loans;
- d. Proceeds from the total or partial sale or liquidation of investments;
- e. The amount paid in terms of Article 5 of this Agreement;
- f. Payments arising under Article 7 of this Agreement;
- g. Unspent earnings of employees in connection with the investment;
- h. Payments under Articles 8, 9 and 10 of this Agreement.

2. Transfer referred to in paragraph 1 of this Article shall be made in freely convertible currency, the market exchange rate applicable on the date of transfer.

Article 7. Expropriation

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures by effect equal to expropriation or nationalization (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except in the public interest. The expropriation shall be carried out with the use of the law, and with the appropriate prompt and adequate compensation.

2. The fee referred to in paragraph 1 of this Article shall be calculated at market value of the expropriated investment as it was immediately before the expropriation or before the impending expropriation became publicly known fact, depending on what happened before (hereinafter referred to as "value day").

3. The market value is calculated in a freely convertible currency at the market rate applicable to the currency value on the day. Compensation shall include interest calculated on the basis of the value of the six-month LIBOR applicable on the date of expropriation, from the date of expropriation until the date of payment. Compensation shall be paid without delay, freely transferable and will be effectively implemented.

4. The investor whose investments are expropriated shall have the right in accordance with the Law on Expropriation of the Contracting Parties to the court or other competent authorities of that Party urgently the consideration of his case and the valuation of its investment and payments in accordance with the principles set out in this Article.

Article 8. Subrogation

1. If the compensation paid to the investor of one Party in accordance with the guarantee given on the occasion of the investment committed in the territory of the other Contracting Party, the other Party shall recognize the authority given by the investor's guarantee for all of his rights and obligations or part of them, as authorized titular in accordance with the law or legal agreement.

2. Transferor or its subsidiary may exercise these rights and fulfill these obligations in accordance with the role of subsidiaries First Parties in the same amount of compensation made investor.

3. Assignment damaged investors will apply also to the transfer payments determined in accordance with Article 6 of this Agreement.

Article 9. Settlement of Disputes between the Contracting Parties and the Investors of the other Party

1. Any dispute relating to investments between one Contracting Party and investors of the other Party, shall be settled friendly whenever possible.
2. If the dispute is referred to in paragraph 1 shall not be settled through negotiation within six months, either party to the dispute may refer the dispute to the court of competent jurisdiction of the Contracting Party that is a party to the dispute.
3. Instead of applying the provisions of paragraph 2 of this Article, any party to the dispute may choose to submit the dispute to resolve through arbitration, as follows:
 - a. International Chamber of Commerce in Paris, or
 - b. International Centre for Settlement of Investment Disputes (ICSID) unless both Parties to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature in Washington DC on March 18, 1965, or
 - c. The rules of the Additional Facility of the Centre for Settlement of Investment Disputes ("ICSID Additional Facility") if they are applicable; or
 - d. An ad hoc arbitral tribunal in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).
4. The arbitrators' decisions will be final and binding on both parties to the dispute and shall be applied in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

Article 10. Settlement of Disputes between the Contracting Parties

1. Disputes Contracting Parties concerning the interpretation or application of this Agreement shall be settled, in the greatest possible extent, friendly.
2. If the dispute is not resolved within six months from the date of written notification to the other side, the dispute shall, at the request of one party to the dispute, be submitted for decision to arbitration.
3. The arbitral tribunal shall be constituted as follows:

Each Party shall appoint one member of the court, and they will select the third member - a citizen of a country to be a boss. The two arbitrators shall be appointed within three months, and the boss will be appointed within five months from the date of written notice to another party.
4. If a Party fails to comply with the period specified in paragraph 3, it will make contact with the President of the International Court of Justice to appoint an arbitrator. If the president of a national of either one or the other party, or if it is otherwise unable to perform this function, shall be required from his assistant, the next by seniority, to perform this function.
5. The arbitrators shall make decisions on the basis of the provisions of this Agreement, as well as the generally accepted principles and rules of international law. Decisions will be taken by majority vote, and shall be final and binding on both parties.
6. The arbitrators will determine the rules and procedures of its work.
7. Each party will bear the costs of its arbitrator and his participation in the court. The costs of the president and the rest of the costs will be divided in equal parts between the two sides.

Article 11. The Application of the Agreement

The provisions of this Agreement shall apply to investments made by investors of one of the Party in the territory of the other Contracting Party before or after the entry into force of this Agreement, but shall not apply to disputes arising from the agreements concluded before its entry into force.

Article 12. Duration and Termination of the Agreement

1. This agreement is subject to ratification in accordance with the laws in force in the two countries and shall enter into force on the date of exchange of instruments of ratification.

2. This agreement will be valid for a period of ten years and will automatically continue to be valid during the same period, unless one of the parties in writing notifies the other party at least one year before the expiry, of its intention to terminate the Agreement.

3. The provisions of this Agreement shall apply, in the case of investments made prior to the expiry of this agreement, and continue over the next 10 years from the date of notification of termination of the Agreement.

This agreement is made and signed in Tripoli on 18 February 2004 in two originals, in Serbian, Arabic and English languages, both texts being equally authentic, and in case of any discrepancy in interpretation, the English text shall prevail.

For Serbia and Montenegro

Goran Svilanović, s. r.

Foreign Affairs Secretary-General

For the Great Socialist People's Libyan Arab Jamahiriya

Abdelrahman Mohamed Šalgam, s. r.

National Committee for International relations and cooperation