

AGREEMENT BETWEEN THE REPUBLIC OF AUSTRIA AND THE REPUBLIC OF SLOVENIA ON THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS

The Republic of Austria and the Republic of Slovenia, hereinafter referred to as the "Contracting Parties",

Desiring to intensify the economic co-operation between the two States,

Intending to encourage and create favourable conditions for investments made by investors of one Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefit,

Recognising that the mutual promotion and protection of investments on the basis of this Agreement will stimulate business initiative,

Reaffirming their commitment to the observance of internationally recognised labour standards,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1 . The term "investor" shall mean:

(a) Natural persons having the nationality of either Contracting Party, in accordance with its laws, and

(b) Legal persons, including corporations, commercial or other 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 . The term "investment by an investor of a Contracting Party" shall mean 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, including:

(a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges and similar rights;

(b) Shares, stocks and other forms of equity participation in a company, and rights derived therefrom;

(c) Bonds, debentures, loans and other forms of debt, and rights derived therefrom;

(d) Claims to money or to any performance having an economic value and associated with an investment;

(e) Rights in the field of intellectual property, technical processes, goodwill and know-how;

(f) Any right, whether conferred by law or by an administrative act by a competent state authority or by contract, including concessions for prospecting, research and exploitation of natural resources.

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

3 . The term "returns" shall mean the amounts yielded by investments and in particular, though not exclusively, shall include profits, dividends, interests, royalties or other forms of income related to the investments, including licence and other fees.

4 . The term "territory" shall mean with respect to each Contracting Party the territory under its sovereignty, including air space and maritime areas, over which the Contracting Party concerned exercises its sovereignty or jurisdiction, in

accordance with internal and international law.

5 . The term "indirect control" shall mean control in fact, determined after examination of the actual circumstances in each situation. In any such examination, all relevant factors should be considered, including the investors

(a) Financial interest, including equity interest, in the investment;

(b) Ability to exercise substantial influence over the management and operations of the investment; and

(c) Ability to exercise substantial influence over the selection of members of the board of directors or any other managing body.

Where there is doubt as to whether an investor controls, directly or indirectly, an investment, an investor claiming such control has the burden of proof that such control exists.

Article 2. Promotion and Protection of Investments

1 . Each Contracting Party shall promote and encourage, as far as possible, within its territory investments by investors of the other Contracting Party and shall admit such investments into its territory in accordance with its laws and regulations.

2 . Each Contracting Party shall accord at all times fair and equitable treatment to investments by investors of the other Contracting Party.

3 . Investments by investors of either Contracting Party shall enjoy full and constant protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory by investors of the other Contracting Party.

Article 3. National and Most Favoured Nation Treatment

1 . 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.

2 . The provisions 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 by virtue of:

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

(b) Any international agreement 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 give sympathetic consideration 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 nationalize 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 . The compensation referred to in paragraph 1 of this Article shall be computed on the basis of the fair market value of the investment immediately before the expropriation or impending expropriation became public knowledge, whichever is earlier. The compensation shall be paid in a freely convertible currency, without delay, and shall include interest at a commercial rate established on a market basis for the currency of payment from the date of expropriation to the date of payment and shall be freely transferable and effectively realisable. In case of delay any exchange rate loss arising from this delay shall be borne by the host country.

3 . The investor whose investments are 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 its investments in accordance with the principles set out in this Article.

Article 6. Compensation for Losses

1 . Investors of one Contracting Party whose investments have suffered losses owing to war or other armed conflict, revolution, national uprising, state of emergency or any similar event or force majeure in the territory of the other Contracting Party shall be accorded by the latter Contracting Party treatment, as regards measures it adopts in relation to such losses, including compensation, indemnification and restitution, no less favourable than that which the latter Contracting Party accords to its own investors or investors of any third State.

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 and, with respect to compensation, shall be in accordance with paragraphs 2 and 3 of Article 5.

Article 7. Transfers

1 . Each Contracting Party shall guarantee investors of the other Contracting Party the free transfer into and out of its territory of funds related to their investments and in particular, though not exclusively:

(a) Initial capital and additional contributions for the maintenance or development of the investments;

(b) Returns;

(c) Payments made under contracts including loan agreements;

(d) Proceeds from the sales or liquidation of all or part of an investment;

(e) Any compensation or other payment referred to in Articles 5 and 6 of this Agreement;

(f) Payments arising out of the settlement of a dispute;

(g) Earnings and other remuneration of personnel engaged from abroad in connection with the investment.

2 . The transfers referred to in this Article shall be made without restriction or delay at the market rate of exchange applicable on the date of transfer and shall be made in a freely convertible currency.

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.

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

(a) Bankruptcy, insolvency or the protection of the rights of creditors;

(b) Issuing, trading or dealing in securities;

(c) Criminal or penal offences; or

(d) Ensuring compliance with orders or judgements in adjudicatory proceedings; provided that such 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 to its investor under an indemnity, guarantee or contract of insurance given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party or its designated agency of all rights and claims of the investor 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 organised.

Article 11. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1 . Any dispute which may arise between one 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 shall be settled amicably through negotiations.

2 . If such a dispute cannot be settled within a period of three (3) months from the date of request for settlement, the investor concerned may submit the dispute to:

(a) The competent court or administrative tribunal of the Contracting Party;

(b) An arbitral tribunal established under:

(i) The arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL);

(ii) The rules of arbitration of the International Chamber of Commerce (ICC);;

(iii) The rules of the International Centre for the Settlement of Investment Disputes (ICSID), established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington, D.C. on March 18, 1965;

(c) Any other form of dispute settlement agreed upon by the parties to the dispute.

3 . Each Contracting Party hereby consents unconditionally to the submission of an investment dispute to international conciliation or arbitration. This consent implies the renunciation of the requirement that the internal administrative or judicial remedies should be exhausted.

4 . The investor may choose to submit the dispute for resolution according to paragraph 2b only until there has been a decision concerning the same claim in the first instance in the proceedings according to paragraph 2a.

5 . 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 an indemnity, guarantee or insurance contract.

6 . 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, including its rules on the conflict of laws, the law governing the authorisation or agreement and

such rules of international law as may be applicable.

7 . The award shall be final and binding on both parties to the dispute. Each Contracting Party shall ensure prompt and effective recognition and enforcement of awards made pursuant to this Article.

Article 12. Settlement of Disputes between the Contracting Parties

1 . Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled amicably by negotiations through diplomatic channels.

2 . If the Contracting Parties fail to reach a settlement within three (3) months after the beginning of negotiations, the dispute shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal, in accordance with the provisions of this Article.

3 . Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State, with which both Contracting Parties maintain diplomatic relations, who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within three (3) months from the date of appointment of the other two members.

4 . If within the periods 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 any necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5 . The arbitral tribunal shall rule according to majority vote. The decisions of the tribunal shall be final and binding on both Contracting Parties.

6 . Each Contracting Party shall be responsible for the costs of its own member and of its representation in the arbitral proceedings. Both Contracting Parties shall assume an equal share of the cost of the Chairman, as well as any other costs. The tribunal may make a different decision regarding costs.

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

Article 13. 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 made by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such provisions shall, to the extent that they are more favourable, prevail over this Agreement.

Article 14. Application of the Agreement

This Agreement shall apply to all investments made by investors from one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations existing at or made after its entry into force. This Agreement shall not apply to the 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 a settlement of the dispute is reached.

Article 15. Consultations

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

Article 16. Entry Into Force and Duration

1 . This Agreement shall enter into force on the first day of the third month after the day of the receipt of the last diplomatic

note confirming that the Contracting Parties have complied with the conditions provided for by national legislation for the entry into force of the present Agreement.

2 . This Agreement shall remain in force for a period of ten (10) years; it shall be extended 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 this Agreement the provisions of Articles 1 to 15 shall remain in force for a further period of ten (10) years from the date of termination of this 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 14 of the present Agreement.

DONE in duplicate at Vienna, on 7, March 2001, in the German, Slovene and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Republic of Austria:

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For the Republic of Slovenia:

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