

# **AGREEMENT BETWEEN THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA AND THE GOVERNMENT OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA ON MUTUAL PROMOTION AND INVESTMENT PROTECTION**

## **AGREEMENT**

BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF AND THE GOVERNMENT OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA on mutual encouragement and protection of investments

The Federal Government of the Federal Republic of Yugoslavia and the Government of the Democratic People's Republic of Korea (hereinafter: the Contracting Parties)

In order to create favorable conditions for increasing economic cooperation between the Contracting Parties, in order to create and maintain favorable conditions for mutual investment,

Convinced that the encouragement and protection of investments will contribute to the strengthening of entrepreneurial initiative and thereby contribute significantly to the development of economic relations between the Contracting Parties,

So agreed to the following:

## **Article 1. Definitions**

For the purposes of this Agreement:

1 The term "investment" means every kind of asset that an investor of one Contracting Party invests in the territory of the other Contracting Party, in accordance with its laws and regulations and includes in particular, though not exclusively:

- Movable and immovable property and all other property rights in rem , such as mortgage, pledge or collateral;
- Stocks, bonds, and other types of securities companies and any other form of participation in the company;
- Monetary claims or other claims arising from contracts which have an economic value;

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 ;

- The concession in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made, including concessions for exploration, extraction and use of natural resources.

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

2 The term "returns" means amounts yielded by an investment and in particular, though not exclusively, includes: profits, capital gains, dividends, interest, royalties, fees for patents and licenses, as well as other fees;

3 The term "investor" means:

- Any natural person who is a national of one Contracting Party and investing in the territory of the other Contracting Party;
- Any legal entity founded, established or otherwise duly organized in accordance with applicable laws and regulations of that Contracting Party, which has a permanent seat on the territory of the Contracting Parties and which invests in the territory of the other Contracting Party.

4 The term "territory" means:

-in respect of the Federal Republic of Yugoslavia, areas covered land borders, as well as the air space, sea area, seabed and subsoil beyond the territorial waters which fall under the sovereign rights and jurisdiction of the Federal Republic of Yugoslavia in accordance with its national law and international law.

-With respect to the Democratic People's Republic of Korea: the territory that includes land, sea and air, as well as a closed economic zone and continental shelf, which the Democratic People's Republic of Korea, in accordance with their national legislation and international law, meets the sovereign rights and jurisdiction.

## **Article 2. Promotion and Protection of Investment**

1 Each Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Parties to carry out investments in its territory and admit such investments in accordance with its laws and regulations.

2 Investments of investors of either Contracting Party shall, at any time, on the territory of the other Contracting Party, receive fair and equal treatment and enjoy full legal protection and security.

## **Article 3. National Treatment and Most Favoured Nation Treatment**

1 Each Contracting Party shall in its territory to provide investment the other Contracting Party treatment no less favorable than that provided by investments of its own investors or investments of investors of any third state, whichever is more favorable.

2 Each Contracting Party shall guarantee in its territory, investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investments, treatment no less favorable than that granted to its own investors or investors of any third state, whichever which is more favorable.

3 The provisions of paragraphs. 1 and 2 of this Article shall be construed to require one Contracting Party to investors of the other Contracting Party gives any advantage in the treatment, preference or privilege, which the first Contracting Party may assign, in the context of:

- Customs union, free trade area, monetary union or similar international agreement establishing such unions or other forms of regional cooperation, whose signatory is, or may become, either Contracting Party, or

- Any international agreement or arrangement relating wholly or partly to taxation.

## **Article 4. Compensation Loss**

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 restitution, indemnification, compensation or other means of settlement of losses, treatment no less favorable than that which the other Contracting Party gives its own investors or investors of any third state. Payments on this basis shall be made without undue delay and shall be freely transferable in freely convertible currency.

2 Without prejudice to 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 Contracting Party, which are the result of:

- Seizure of their property by the authorities of the other Contracting Party, or

- Destruction of their property by the authorities of the other Contracting Party, which did not result in combat, nor were necessary because of the situation, shall be granted restitution or adequate compensation. Payments on this basis shall be made without undue delay and shall be freely transferable in freely convertible currency.

## **Article 5. Expropriation**

1 Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures by effect equal to nationalization or expropriation (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, on a non-discriminatory basis, with

Adequate compensation that will be paid without undue delay. Such compensation shall correspond to the 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, will include interest calculated based on LIBOR until the date of

payment, will be paid without undue delay, freely transferable in freely convertible currency.

2 Damaged investor will have the right, in accordance with the legislation of the Contracting Party which applies expropriation, that court or other independent authority of that Contracting Party shall make immediate consideration of his case and the assessment of its investments in accordance with the principles defined in this article.

## **Article 6. Transfers**

1 Each Contracting Party shall guarantee investors of the other Contracting Party, after payment of all fiscal and other financial obligations of investors of the other Contracting Party, the free transfer of payments related to their investments and in particular, though not exclusively:

itemized Capital and additional resources to maintain or increase investments;

itemized Return;

itemized Funds from the repayment of loans;

itemized Revenue from the sale or liquidation of investments;

itemized Remuneration paid in the sense of Art. 4 and 5 of this Agreement.

2 Transfers payment referred to in paragraph 1 of this Article shall be made without undue delay, in freely convertible currency, the official exchange rate on the date of transfer in the territory of the Contracting Party where the investment is realized.

## **Article 7. Subrogation**

1 If one Contracting Party or its appointed institution makes payment to its own investors the guarantee for investment in the territory of the other Contracting Party, another Contracting Party shall be bound to recognize:

1 - The allocation of the first Party or its naimenovanoj institution, by law or legal transaction, of all rights or claims obeštećenog investors and

2 - That the first Contracting Party to the subrogation authorized to exercise such rights or implemented such claims and shall assume the obligations related to the investment.

2 So subrogated rights or claims shall not exceed the original rights or claims of the investor.

3 Subrogation rights and obligations obeštećenog investors apply to the transfer payment is made in accordance with Article 6 of this Agreement.

## **Article 8. Settlement of Disputes between the Contracting Parties**

1 Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled through negotiations, in as much as possible.

2 If a dispute between the Contracting Parties can not be solved in this way within six months from the start of negotiations, it shall, at the request of either Contracting Party, be submitted to an arbitral tribunal.

3 The arbitral tribunal referred to in paragraph 2 of this Article shall be constituted on an ad hoc basis, in each case, as follows: within three months of receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. These two members shall, within two months to choose a third member - a citizen of a third country, which will, with the consent of both Contracting Parties, to be appointed president of the arbitral tribunal.

4 If within the periods specified in paragraph 3 of this Article shall not constitute an arbitration tribunal and one other Contracting Party may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointments. If the president of a national of either one or the other Contracting Party, or if it is otherwise unable to perform said function, shall be required of the Vice President to make the necessary appointments. If the vice president of a national of either one or the other Contracting Party, or if he is unable to perform said function, following the

Seniority member of the International Court of Justice, who is not a citizen of either one or the other Contracting Party, will be asked to make the necessary appointments.

5 The arbitral tribunal shall decide on the basis of the provisions of this Agreement, as well as the generally accepted principles and rules of international law. The arbitral tribunal shall take decisions by majority vote. Its decisions are final and binding for both Contracting Parties. The Court shall determine its own procedure of work.

6 Each Contracting Party shall bear the costs of its representative and his participation in the arbitration proceedings. The costs of the president and the remaining costs shall be borne equally by both Contracting Parties.

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

1 Disputes between an investor of one Contracting Party and the other Contracting Party in connection with the obligations of the other Contracting Party, under this Agreement, in connection with the investment of investors of the first Contracting Party, shall be settled, as far as possible, through negotiations.

2 If the disputes referred to in paragraph 1 of this article can not be resolved within six months and one and the other party to the dispute shall have the right to apply for a court of competent jurisdiction of the Contracting Party which is a party to the dispute.

3 Instead of applying the provisions of paragraph 2 of this article and the one and the other party to the dispute may refer the dispute to arbitration the resolution:

- An ad hoc arbitral tribunal, in accordance with the Arbitration Rules of the United Nations Commission on Trade Law (UNCITRAL);

- International Centre for Settlement of Investment Disputes in case both Contracting Parties to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature in Washington on March 18, 1965 (ICSID Convention).

4 The verdict will be final and binding on both parties to the dispute and will be conducted in accordance with the laws and regulations of the Contracting Party in whose territory the investment is realized.

## **Article 10. Application of other Provisions**

If the laws of any Contracting Party, or the present or future international agreements between the Contracting Parties or other international agreements signed by the Contracting Parties, containing provisions, which are investments of investors of another Contracting Party gives the treatment that is more favorable than the treatment which is provided for in this Agreement, such laws and agreements shall, to the extent that they are more favorable, prevail over this agreement.

## **Article 11. Consultations**

When necessary, representatives of the Contracting Parties will consult on issues related to the implementation of this agreement. These consultations will be conducted on the proposal of one of the Contracting Parties, in time and place will be agreed through diplomatic channels.

## **Article 12. The Application of the Agreement**

The provisions of this Agreement will not apply to investments that are implemented investors of one Contracting Party before or after the date of entry into force of this Agreement and shall apply from the date of entry into force of this Agreement.

## **Article 13. Entry Into Force, Duration and Termination of the Agreement**

1 Each Contracting Party shall notify the other Party of the completion of the legal procedures that must be carried out on its territory for the sake of the entry into force of this Agreement. This Agreement shall enter into force on the date of exchange of instruments of ratification.

2 This agreement is concluded for a period of ten years and will automatically continue to be valid in successive periods of five years unless one of the Contracting Parties in writing notify the other Party, at least twelve months before the expiry, of its decision to terminate this agreement.

3 When it comes to investments realized before expiration of validity of this Agreement, the provisions of Art. 1 to 12 will continue to be valid for a period of next 10 years from that date.

IN WITNESS WHEREOF the undersigned person, duly authorized by their respective governments, signed this agreement.

Done in Pyongyang, 26 August 1998 (Dz. 87) in two originals, in Serbian, Korean and English languages, as all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Federal Government

For the Government

The Federal Republic

Democratic People

Yugoslavia

Republic of Korea

Ljubomir Đukić, s. r.

Kim Bong I, Sr.