

AGREEMENT BETWEEN THE GOVERNMENT OF THE HELLENIC REPUBLIC AND THE FEDERAL GOVERNMENT OF YUGOSLAVIA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Hellenic Republic and the Federal Government of the Federal Republic of Yugoslavia,

Hereinafter referred to as the "Contracting Parties",

DESIRING to intensify their economic cooperation to the mutual benefit of both countries on a long term basis,

HAVING as their objective to create favourable conditions for investments by investors of either Contracting Party in the territory of the other Contracting Party,

RECOGNIZING that the promotion and protection of investments, on the basis of this Agreement, will stimulate the initiative in this field and thereby significantly contribute to the development of economic relations between the Contracting Parties,

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purposes of this Agreement:

1. "Investment" means every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party, in accordance with the latter's legislation and in particular, though not exclusively, includes:

- a) Movable and immovable property and any rights in rem such as servitudes, usufructus, mortgages, liens or pledges;
- b) Shares in and stock of a company, debentures as well as other kinds of securities of a company and any other form of participation in a company;
- c) Claims to money or any other claim under contract having an economic value;
- d) Intellectual and industrial property rights, patents, trade marks, technical processes, know-how, goodwill and any other similar rights;
- e) Concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;

A possible change in the form in which the investments have been made does not affect their character as investments.

2. "Returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties, fees, including patent and licence fees.

3. "Investor" means:

- a) A natural person having the nationality of one Contracting Party in accordance with its law and making investments in the territory of the other Contracting Party;
- b) A legal entity incorporated, constituted or otherwise duly organised in accordance with the legislation of one Contracting Party, having its headquarters or its effective economic activity in the territory of that same Contracting Party and making investments in the territory of the other Contracting Party.

4. "Territory" means in respect of either Contracting Party, the territory under its sovereignty including the territorial sea, as well as marine and submarine areas over which that Contracting Party exercises, in conformity with international law, sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its legislation.
2. Investments by investors of a Contracting Party shall, at all times, be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Each Contracting Party shall ensure that the management, maintenance, use, enjoyment or disposal, in its territory, of investments by investors of the other 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 ensuing therefrom, enjoy the same protection as the initial investments.
4. Each Contracting Party shall, in its territory, respect, in good faith, all obligations concerning a particular investor of the other Contracting Party undertaken within its legal framework.

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

1. Each Contracting Party shall accord to investments, made in its territory by investors of the other Contracting Party, treatment not less favourable than that 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, as regards the management, maintenance, use, enjoyment or disposal of their investments in its territory, treatment not less favourable than that which it accords to its own investors or to investors of any third 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 the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:
 - a) Its participation in any existing or future free trade zone, 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, nationalized or subjected to any other measure having equivalent effect to expropriation or nationalization (hereinafter referred to as "expropriation"), except in the public interest, under due process of law, 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 investor affected shall have the right, under the legislation of the Contracting Party making the expropriation, to a prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.

Article 5. 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, riot or civil disturbance in the territory of the other Contracting Party 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. Resulting payments shall be made without delay and shall be freely transferable.
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) Requisitioning of their investment or part thereof by the latter's authorities or executive forces, or

b) Destruction of their investment or part thereof by the latter's authorities or executive forces, which was not caused in combat action or required by the necessity of the situation,

Shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective. Resulting payments shall be made without delay and shall be freely transferable.

Article 6. Transfers

1. Each Contracting Party shall guarantee, in respect of investments of investors of the other Contracting Party, the unrestricted transfer of the investment and its returns, after fulfilment of any financial obligation pertaining to the investment.

The transfers shall be effected without delay, in a freely convertible currency, at the prevailing rate of exchange 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) Returns;
- c) Funds in repayment of loans;
- d) Proceeds of sale or liquidation of the whole or any part of the investment;
- e) Compensation under Articles 4 and 5.

Article 7. Subrogation

1. If one Contracting Party or its designated Agency makes a payment 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 recognise:

- a) The assignment to the first Contracting Party or its designated Agency by law or by legal transaction, of any rights and claims of the idemnified investor, and
- b) That the first Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation and shall assume the same obligations pertaining to the investment.

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

3. Subrogation of the rights and obligations of the idemnified investor shall also apply to the transfers effected in accordance with Article 6 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 the 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, the chairman within five months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitration tribunal.

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 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 too is 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 on the basis of respect of the law, including particularly this Agreement and other

relevant agreements between the Contracting Parties, as well as the generally acknowledged rules and principles of international law.

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

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

7. Each Contracting Party shall bear the cost of the arbitrator appointed by itself and of its representation. The cost of the Chairman shall be born in equal parts by the 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 Party concerning an obligation or the latter under this Agreement, in relation to an investment of the former, shall, if possible be settled by the disputing parties in an amicable way.

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

Each Contracting Party hereby consents to the submission of such dispute to international arbitration.

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

a) The International Centre for the Settlement of Investment Disputes, established under the Convention on the Settlement of Investment Disputes between States and 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 dispute 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.

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 rule, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such a rule shall, to the extent that it is more favourable, prevail over this Agreement.

Article 11. Consultations

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

Article 12. Application of the Agreement

This Agreement shall apply to investments made by investors of either Contracting Party in the territory of the other Contracting Party consistent with the latter's legislation, prior to as well as after the date of its entry into force. However, the provisions of this Agreement shall be applicable from the date of its entry into force.

Article 13. Entry Into Force — Duration — Termination

1. This Agreement shall enter into force thirty days after the date on which the Contracting Parties have exchanged written notifications informing each other that their respective constitutional procedures have been completed.

2. This Agreement is concluded for a period of ten years and shall thereafter be automatically extended for successive

periods of ten years, unless either Contracting Party notifies in writing, at least twelve months prior to its date of expiry, to the other Contracting Party, its decision to terminate this Agreement.

3. 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 Athens on 25th June 1997, in the Greek, Serbian and English languages, all texts being equally authentic.

In case of divergence the English text shall prevail.

FOR THE GOVERNMENT OF THE HELLENIC REPUBLIC

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Deputy Minister for National Economy

FOR THE FEDERAL GOVERNEMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA

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