

Agreement between the Republic of Serbia and the Republic of Slovenia on Mutual Promotion and Investment Protection

The Government of the Republic of Slovenia and the Federal Government of Federal Republic of Yugoslavia, hereinafter referred to as the "Contracting Parties";

Desiring to intensify the economic co-operation between the two Contracting Parties;

Intending to encourage and create favourable conditions for greater economic co-operation in the field of investments made by investors of one Contracting Party in the territory of the other Contracting Party;

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

Have agreed as follows:

Article 1. Definitions

1. For the purpose of this Agreement:

The term "investment" shall mean every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter including, in particular, though not exclusively:

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

(b) Shares, stocks, debentures and any other form of interest in a company;

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

(d) Intellectual property rights, including copyrights and neighbouring rights and industrial property rights, such as patents, licences, industrial designs or models, trademarks, goodwill, technical processes and know-how;

(e) Concessions conferred by law, by an administrative act or under a contract by a competent state authority including concessions for prospecting, research and exploitation of natural resources.

Any alternation 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.

2. The term "investor" shall mean:

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

(b) Legal entities incorporated, constituted or otherwise duly organized in accordance with the laws and regulations of one Contracting Party, having their seat in the territory of that Contracting Party.

3. The term "returns" shall mean:

The amounts yielded by investments and in particular, though not exclusively, shall include profits, dividends, interests, royalties, license fees and other similar fees, or other forms of income related to the investments.

4. The term "territory" shall mean:

(a) With respect to the Republic of Slovenia: the territory under its sovereignty, including air space and maritime areas, over which the Republic of Slovenia exercises its sovereignty or jurisdiction, in accordance with internal and international law.

(b) With respect to the Federal Republic of Yugoslavia: the area encompassed by land boundaries as well as the sea, seabed and its subsoil beyond the territorial sea over which the Federal Republic of Yugoslavia exercises, in accordance with its national laws and regulations and international law, sovereign rights or jurisdiction;

Article 2. Promotion and Protection of Investments

1 . Each Contracting Party shall encourage, create favourable and transparent conditions for investors of the other Contracting Party to make investments in its territory, 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 of investors of the other Contracting Party and their returns.

3 . Investments made by investors of either Contracting Party shall enjoy full legal 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 of investors of the other Contracting Party in its territory.

Article 3. National Treatment and Most-favoured-nation Treatment

1 . Investments made by investors of one Contracting Party in the territory of the other Contracting Party, or returns related thereto, shall be accorded treatment which is fair and equitable and no less favourable than that which the latter Contracting Party accords to the investments and returns of its own investors or of investors of any third State.

2 . Investors of one Contracting Party shall be accorded by the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments and returns, treatment which is fair and equitable and no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

3 . The provisions of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party, or to their investments, the benefit of any treatment, preference or privilege by virtue of:

(a) Any existing or future membership in a free trade area, customs union, common market or regional economic integration organisation or any international agreement on investment; or

(b) Any bilateral or/and multilateral agreement relating wholly or mainly to taxation.

Article 4. Expropriation

1 . Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalised or subject to any other measure having effect equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation") except for a public purpose, on a non-discriminatory basis, under due process of law and against prompt, effective and adequate compensation.

2 . The compensation referred to in paragraph 1 of this Article shall be computed on the basis of the market value of the investment immediately before the expropriation or impending expropriation became public knowledge, whichever is earlier. The compensation shall be made in convertible currency without delay and shall include interest at the commercial rate or the London Inter-Bank Offered Rate (LIBOR) from the date of expropriation to the date of payment, and shall be freely transferable and effectively realisable. paragraph 1 of this Article shall be computed on the basis of the market value of the investment immediately before the expropriation or impending expropriation became public knowledge, whichever is earlier. The compensation shall be made in convertible currency without delay and shall include interest at the commercial rate or the London Inter-Bank Offered Rate (LIBOR) from the date of expropriation to the date of payment, and shall be freely transferable and effectively realisable.

3 . The investor whose investments are expropriated, shall have the right under the law of expropriating Contracting Party to prompt review by a judicial or other competent authority of that Contracting Party of its case and of valuation of its investments in accordance with the principles set out in this Article.

Article 5. Compensation for Losses

1 . Investors of one Contracting Party whose investments have suffered losses owing to war or other armed conflict, revolution, civil disturbance, state of emergency, or any similar event 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. Any payments made under this Article shall be freely transferable.

2. Without prejudice to paragraph 1, an investor of a Contracting Party which, in any of the situations referred to in that paragraph, suffers a loss resulting from: paragraph 1, an investor of a Contracting Party which, in any of the situations referred to in that paragraph, suffers a 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 made without delay in convertible currency and shall include interest at the commercial rate or the London Inter-Bank Offered Rate (LIBOR), from the date of losses to the date of payment and shall be freely transferable and effectively realisable.

Article 6. Transfers

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

- a) Initial capital and additional capital for the maintenance or development of the investments;
- b) Returns;
- c) Funds in repayment of loans related to an investment;
- d) Proceeds from the sale or liquidation of all or part of an investment;
- e) Any compensation or other payment referred to in Articles 4 and 5 of this Agreement; Articles 4 and 5 of this Agreement;
- f) Payments arising out of the settlement of a dispute referred to Articles 9 and 10 of this Agreement; Articles 9 and 10 of this Agreement;
- g) Unspent 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 undue delay at the market exchange rate applicable on the date of transfer.

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.

Article 7. Subrogation

1. 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 recognize:

- (a) The assignment to the former Contracting Party or its designated Agency of all rights and claims of the investor,
- (b) The right of the former Contracting Party or its designated Agency to exercise all such rights and enforce such claims by virtue of subrogation.

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

Article 8. Other Obligations

Each Contracting Party shall observe any legal obligation it may have entered into with regard to specific investments by investors of the other Contracting Party.

Article 9. 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 by negotiations through diplomatic channels.
- 2 . If the Contracting Parties fail to reach a settlement within six (6) 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 (2) 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. 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 reach its decision on the basis of the provisions of this Agreement as well as of the generally accepted principles and rules of international law. The arbitral tribunal shall rule according to majority vote. The decision 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 representatives at 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.

Article 10. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

- 1 . Any dispute which may arise between a Contracting Party and an investor of the other Contracting Party concerning an investment of that investor in the territory of the former Contracting Party shall be settled amicably through negotiations.
- 2 . If such a dispute cannot be settled by negotiations within a period of six (6) months from the date of a written request for settlement, the investor concerned may submit the dispute to:
 - (a) The competent court or administrative tribunal of the Contracting Party, party to the dispute,
 - (b) An ad hoc tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or ad hoc tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or
 - (c) The International Centre for the Settlement of Investment Disputes (the "Centre"), established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States (the "ICSID Convention") opened for signature in Washington DC on March 18, 1965, if both Contracting Parties are parties to the ICSID Convention; Convention on the Settlement of Investment Disputes between States and Nationals of other States (the "ICSID Convention") opened for signature in Washington DC on March 18, 1965, if both Contracting Parties are parties to the ICSID Convention;
 - (d) The Centre, under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (the "Additional Facility Rules"), if the Contracting Party of the investor or the Contracting Party, party to the dispute, but not both, is a party to the ICSID Convention. rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (the "Additional Facility Rules"), if the Contracting Party of the investor or the

Contracting Party, party to the dispute, but not both, is a party to the ICSID Convention.

3 . Each Contracting Party hereby consents unconditionally to the submission of an investment dispute to international conciliation or arbitration.

4 . The consent given by the Contracting Party in paragraph 3. of this Article, together with either the written submission of the dispute to resolution by the investor or the investor's advance written consent to such submission, shall constitute the written consent and the written agreement of the parties to the dispute to its submission for settlement for the purposes of Chapter II of the ICSID Convention, the ICSID Additional Facility Rules, Article I of the UNCITRAL Arbitration Rules, the Rules of Arbitration of the ICC and Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("the New York Convention"). paragraph 3. of this Article, together with either the written submission of the dispute to resolution by the investor or the investor's advance written consent to such submission, shall constitute the written consent and the written agreement of the parties to the dispute to its submission for settlement for the purposes of Chapter II of the ICSID Convention, the ICSID Additional Facility Rules, Article I of the UNCITRAL Arbitration Rules, the Rules of Arbitration of the ICC and Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("the New York Convention").

5 . Legal entities which has the nationality of a Contracting Party, party to the dispute, and which, before the dispute between it and that Contracting Party arises, is controlled by natural or legal persons of the other Contracting Party, shall for the purpose of Article 25 (2) (b) of the ICSID Convention be treated as a "national of another Contracting Party". Article 25 (2) (b) of the ICSID Convention be treated as a "national of another Contracting Party".

6 . A Contracting Party shall not assert as a defence, counter clame, 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.

7 . Neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have terminated and a Contracting Party has failed to abide by or to comply with the award rendered in those proceedings.

8 . The award shall be final and binding on both parties to the dispute and shall be recognised and enforced in accordance with internal and international law.

Article 11. 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 12. Application of the Agreement

This Agreement shall apply to all investments by investors of 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 and shall apply from the date of entry into force of this Agreement.

Article 13. General Exceptions

1 . Nothing in this Agreement shall be construed so as to prevent a Contracting Party from taking any action in pursuance of its international obligations for the maintenance of international peace and security or which it considers necessary for the protection of its essential security interests.

2 . The provisions of this Article shall not apply to Article 4, Article 5 or paragraph 1 (e) of Article 6. Article 4, Article 5 or paragraph 1 (e) of Article 6.

Article 14. 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 either Contracting Party, at a place and a time to be agreed upon through diplomatic channels.

Article 15. Entry Into Force, Duration and Termination

1 . This Agreement shall enter into force on the first day of the next calendar month following the month of receipt of the latter of the two notifications with which the Contracting Parties notify each other that the requirements of their national legislation for the entry into force of the Agreement have been fulfilled.

2 . This Agreement shall remain in force initially for a period of ten (10) years and shall be considered as renewed on the same terms for a period of five (5) years and so forth, unless twelve (12) months before its expiration either Contracting Party notifies the other in writing of its intention to terminate the Agreement.

3 . In respect of investment made prior to the date of termination of this Agreement, the provisions of Articles 1 to 14 shall remain in force for a further period of ten (10) years from that date termination of this Agreement. Articles 1 to 14 shall remain in force for a further period of ten (10) years from that date termination of this Agreement.

Done in duplicate at Beograd on 18. 6. 2002, in the Slovenian, Serbian and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF SLOVENIA

Dr Janez Drnovšek, (s)

FOR THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA

Dragiša Pešić, (s)