

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MACEDONIA AND THE GOVERNMENT OF THE DEMOCRATIC PEOPLES REPUBLIC OF KOREA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

THE GOVERNMENT OF THE REPUBLIC OF MACEDONIA AND THE GOVERNMENT OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA, hereinafter referred to as the "Contracting Parties", desiring to intensify economic cooperation to the mutual benefit of both Contracting Parties, intending to create and maintain favorable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party, recognizing the need to promote and protect foreign investments with the aim to foster the economic prosperity of both Contracting Parties, have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means any kind of assets invested by an investor of one Contracting Party in accordance with the laws and regulations of the other Contracting Party and shall include:

- a) movable and immovable property, guarantees and property rights, such as servitude, mortgages and other rights under the law;
- b) shares, stocks, debentures or any other kind of participation in companies;
- c) claims to money or to any rights to any performance having an economic value;
- d) copyrights, trade marks, trade names, patents or other intellectual or industrial property rights, know-how and goodwill;
- e) any rights of a financial nature granted by law or agreement, such as concessions granted in accordance with applicable regulations, that regulate the performance of activities including to search for, process, extract and exploit natural resources.

2. The term "investor" refers to any natural or legal person of one Contracting Party that invests in the territory of the other Contracting Party.

- a) The term "natural person" refers with regard to either Contracting Party to any natural person having nationality of the Contracting Parties to this Agreement.
- b) The term "legal person" refers with regard to either Contracting Party to any legal entity including, enterprises, companies, corporations, business associations and or organizations established or organized in accordance with the respective state legislation of either Contracting Party having their seat in the territory of that Contracting Party;

3. The term "return" means money yielded by an investment and in particular, profits, interest, dividends, royalties, any fees, including re-invested capital and capital gains;

4. The term "territory" shall mean;

(a) in respect of the Republic of Macedonia: the territory of the Republic of Macedonia, including land, water surface and air space, over which it exercises, in accordance with its laws and regulations and international law, sovereign rights and jurisdiction.

(b) in respect of the Democratic People's Republic of Korea: the territory of the Democratic People's Republic of Korea

including the territorial land, sea and air and any maritime or submarine areas within which it exercises, in accordance with its internal and international law, sovereignty, sovereign rights and jurisdiction.

5. Any change in the form of an investment, does not affect its character as an investment.

Article 2. Promotion and Admission of Investments

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

2. When a Contracting Party shall have admitted an investment in its territory, it shall grant in accordance with its laws and regulations the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Contracting Party shall, whenever needed, endeavor to issue the necessary authorizations concerning the activities of consultants and other qualified persons of foreign nationality.

Article 3. Protection and Treatment of Investments

1. Each Contracting Party shall protect, within its territory, investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale or liquidation of such investments.

2. Each Contracting Party shall ensure fair and equitable treatment, within its territory, of the investments of the investors of the other Contracting Party. This treatment shall not be less favorable than that granted by each Contracting Party to investments made by its own investors or by investors of a third State.

3. The treatment of items 1 and 2 of this Article shall not apply to privileges which either Contracting Party accords to investors of a third State because of its membership in, or association with, a free trade area, customs union,, common market or to an existing or future convention on the avoidance of double taxation or any convention on other fiscal matters.

Article 4. Expropriation and Compensation

1. Neither of the Contracting Parties shall take, measures of expropriation, nationalization or any other measure (hereinafter referred to as expropriation) having the same effect against investments of investors of the other Contracting Party, unless the measures are taken in the public interest, on a non-discriminatory basis and under due process of law and provided that provisions be made for effective and adequate compensation.

Such compensation shall amount to the market value of the expropriated investment immediately before the expropriation of the impending expropriation become public knowledge. The compensation includes interest calculated at a normal commercial rate from the date of expropriation to the date of payment.

2. The amount of compensation shall be settled in a freely convertible currency and freely transferable and paid without undue delay to the person entitled there to without regard to its residence or domicile.

A compensation shall be deemed to be made "without undue delay" if effected within such period as is normally required for the completion or transfer formalities.

The said period shall commence on the day on which the relevant request has been submitted and may not exceed three months.

3. Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favorable than that accorded to its own investors or to investors of any third State.

Resulting payments shall, whenever possible, be transferable without delay, in a freely convertible currency.

Article 5. Transfer

1. Each Contracting Party, in whose territory investments have been made by investors of the other Contracting Party, shall grant those investors a free transfer of the payments relating to these investments, particularly of:

- a) the capital and any additional sums necessary for the maintenance and development of the investment;
- b) gains, profits, interests, dividends and other current income;
- c) funds in repayment of loans including interest regularly contracted and documented and directly related to a specific investment;
- d) royalties and fees;
- e) the proceeds from a total or partial sale or liquidation of an investment;
- f) compensations provided for in Article 4;
- g) the earnings of nationals of one Contracting Party who are allowed to work in connection with an investment in the territory of the other.

2. Transfers shall be effected without delay in a freely convertible currency in the normal applicable exchange rate at the date of the transfer, in accordance with the procedures established by the Contracting Party in whose territory the investment was made, provided that all financial obligations toward this Contracting Party have been fulfilled.

3. The Contracting Parties undertake to accord to transfers referred to in paragraphs 1 and 2 of this Article a treatment no less favorable than that accorded to transfers originating from investments made by investors of any third State.

Article 6. Subrogation

1. If a Contracting Party or any agency makes a payment to any of its investors under a guarantee or insurance, it has contracted in respect of an investment.

The other Contracting Party shall recognize the validity of the subrogation in favor of the former Contracting Party or agency to any right or title held by the investor.

The Contracting Party or any agency, that is subrogated in the rights of an investor, shall be entitled to the same rights as those of the investor and to the extent that they exercise such rights they shall do so subject to the obligations of the investor pertaining to such insured investment.

2. In the case of subrogation as defined in paragraph 1 above, the investor shall not pursue a claim unless authorized to do so by the Contracting Party or any agency thereof.

Article 7. Settlement of Disputes between One Contracting Party and an Investor of the other Contracting Party

1. Any dispute between one Contracting Party and an investor of the other Contracting Party shall be notified in writing, including detailed information, by the investor to the host Contracting Party of the investment. Any dispute between the Contracting Parties, should be settled by means of a friendly agreement.

2. If the dispute cannot be settled amicably within six months from the date of request for settlement, the investor shall be entitled to submit the case, at his own choice, to:

- The competent court of the Contracting Party in the territory of which the investment has been made; or
- The "ad hoc" Arbitration Tribunal established under the Arbitration Rules of Procedure of the United Nations Commission on International Law (UNCITRAL); or
- The International Center for Settlement of Investment Disputes (ICSID), in accordance with the Convention on Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington D.C. on 18.03.1965 (ICSID Convention) if both Contracting Parties signed this Convention.

3. Once the dispute has been submitted to the competent tribunal of the Contracting Party or to international arbitration, the choice of one or the other procedure will be definitive.

4. The arbitration award shall be based on:

- The provisions of this Agreement;
- The national law of (the Contracting Party in whose territory the investment was made);

- The rules and the universally accepted principles of international law.

5. The arbitration awards shall be final and binding for the Parties to the dispute. Each Contracting Party undertakes to execute the award, in accordance with its national law.

Article 8. Settlement of Disputes between Contracting Parties

1. Disputes between Contracting Parties regarding the interpretation and application of the provisions of this Agreement shall be settled by consultation and negotiation through diplomatic channels.

2. If both Contracting Parties cannot reach an agreement within six months after the beginning of the dispute between themselves, the latter shall, upon request of either Contracting Party, be submitted to an arbitration tribunal which shall be constituted as follows:

Each Contracting Party shall appoint an arbitrator and these two arbitrators shall nominate a chairman who shall be a national of a third State, which maintains diplomatic relations with both Contracting Parties.

3. If one of the Contracting Parties has not appointed its arbitrator and it has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

4. If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

5. If, in the cases specified under paragraphs 3 and 4 of this Article, the President of the International Court of Justice is prevented from carrying out the said function, or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or if he is a national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.

6. Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure. The tribunal shall reach its award by a majority of votes.

7. The award of the tribunal is final and binding for each Contracting Party.

8. Each Contracting Party shall bear the costs of its own member of the tribunal, and of its representation in the arbitral proceedings; the costs of the chairman and remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, decide that a higher proportion of costs shall be borne by one of the Contracting Parties and this award shall be binding on both Contracting Parties.

Article 9. More Favorable Provisions

If the domestic 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 by investors of the other Contracting Party to a treatment more favorable than is provided for by this Agreement, such regulation shall to the extent that it is more favorable prevail over this Agreement.

Article 10. Consultations and Exchange of Information

Upon request by either Contracting Party, the other Contracting Party shall agree promptly to consultations on the interpretation or application of this Agreement.

Upon request by either Contracting Party, information shall be exchanged on the impact that the laws, regulations, decisions, administrative practices or procedures or policies of the other Contracting Party may have on investments covered by this Agreement.

Article 11. Applicability of this Agreement

The provisions of this Agreement shall apply to all investments made in the territory of one Contracting Party prior to or after the entry into force of the Agreement by investors of the other Contracting Party, it shall, however, not be applicable to divergences or disputes which have arisen prior to its entry into force.

Article 12. Amendment of the Agreement

This Agreement may be amended by mutual consent in writing between the Contracting Parties. Any amendment shall enter into force when each Contracting Party has notified the other that it has completed its legal requirements for entry into force of such an amendment.

Article 13. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force thirty days after the date on which both Contracting Parties shall have notified each other that their legal requirements for the entry into force of this Agreement have been fulfilled.

2. This Agreement shall remain in force for a period of ten years. Thereafter, it shall automatically continue to be valid for further successive period of ten years unless either Contracting Party notifies in writing at least twelve months prior to its expiry date the other Contracting Party of its decision to terminate the Agreement.

3. In case of official notice as to the termination of the present Agreement, the provisions of Article 1 to 11 shall continue to be effective for a further period of ten years for investments made before official notice was given.

Done on 15.10.1997 in two originals, in the Macedonian,

Korean and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF MACEDONIA

FOR THE GOVERNMENT OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA