

# Agreement between the Macedonian Government and the Spanish Government on the Promotion and Reciprocal Protection of Investments

The Spanish Government and the Macedonian Government, hereinafter referred to as the Contracting Parties,

Desiring to intensify economic cooperation between the two countries;

Aiming to create favourable conditions for investments by investors of either Contracting Party in the territory of the other contracting party, and

Recognizing that the promotion and protection of investments under this agreement will stimulate initiatives in this field,

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

1. "investor" means any natural or legal person of one of the two Contracting Parties to make investments in the territory of the other Contracting Party:

a) "natural person" means any natural person who, in accordance with the law of that Contracting Party, are considered national.

b) "legal person" means any legal person or any other legal entity or otherwise organized duly constituted in accordance with the applicable legislation of that Contracting Party and having its registered office in the territory of that same Contracting Party.

2. "investment" means every kind of assets 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 Contracting Party, including in particular, though not exclusively, the following:

a) Ownership of movable and immovable property as well as other rights in rem, such as mortgages, liens, pledges and similar rights;

b) Shares, stocks or any other form of participation in companies;

c) The right to money or to any other provision having an economic value;

d) Industrial Intellectual Property Rights and Intellectual Property Rights, such as copyrights, trademarks, patents, processes, know-how, technical know-how and goodwill;

e) Rights conferred by law or under contract, including concessions to prospecting, cultivate, extract or exploit natural resources.

The investments made in the territory of a Contracting Party by any legal person of that same Contracting Party that is owned or controlled effectively by investors of the other Contracting Party shall also be considered as investments made by investors of the second Contracting Party provided that have been made in accordance with the laws and regulations of the former Contracting Party.

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

3. Income "" means the amounts yielded by an investment and shall include in particular, though not exclusively, profits, dividends, interests, capital gains, royalties and fees;

4. "territory" means:

a) With regard to the Spanish part, the land territory, internal waters and the territorial sea and the airspace above them, as well as the exclusive economic zone and the continental shelf extending beyond the limits of the territorial sea over which the Party has or may have Spanish jurisdiction and / or sovereign rights in accordance with international law;

b) With respect to the party Macedonia, land, water and airspace over which the party Macedonia exercises, in accordance with international law, sovereign rights and jurisdiction over such areas.

## **Article 2. Promotion and Admit Investments**

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

2. If a Contracting Party has 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 commercial, administrative or technical assistance. each Contracting Party shall endeavour to issue the necessary authorizations concerning the activities of consultants and other qualified persons of foreign nationality.

## **Article 3. Protection**

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall obtain a fair and equitable treatment and shall enjoy full protection and security. in no case shall such investments to a contracting party treatment less favourable than that required by international law.

2. 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 hinder unreasonable or discriminatory measures by the management, maintenance, use, enjoyment, extension and sale and liquidation of such investments. each Contracting Party shall observe any written obligation it has assumed with regard to investments of investors of the other contracting party.

## **Article 4. National and Most-favoured-nation Treatment**

1. Each Contracting Party shall accord to investments made in its territory by investors of the other Contracting Party A treatment no less favourable than that accorded to investments made by its own investors to investors or of any third State, whichever is more favourable to the investor concerned.

2. Each Contracting Party shall accord to investors in its territory of the other contracting party, as regards the management, use, enjoyment or disposal of their investments, treatment no less favourable than that accorded to its own investors to investors or of any third State, whichever is more favourable to the investor concerned.

3. The treatment granted under paragraphs 1 and 2 of this article shall not be construed as to oblige one contracting party to extend to the investors of the other contracting party and their investments the benefit of any treatment, preference or privilege resulting from: paragraphs 1 and 2 of this article shall not be construed as to oblige one contracting party to extend to the investors of the other contracting party and their investments the benefit of any treatment, preference or privilege resulting from:

a) Its membership or association with a free trade area, customs union, economic or monetary union or other similar international agreements, existing or future, including other forms of regional economic organization, or

b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

## **Article 5. Expropriation**

1. Neither of the Contracting Parties shall take measures of expropriation, nationalization or any other measures having the same effect against investments of investors of the other contracting party (hereinafter referred to as "expropriation") unless the measures are taken for a public purpose; on a non-discriminatory basis, under due process of law, and provided that such measures are accompanied by the payment of prompt, effective and adequate compensation.

Such compensation shall correspond to the market value of the expropriated investment immediately before reaching public knowledge expropriation or impending, whichever occurs earlier (hereinafter referred to as the valuation date). the

compensation shall also include interest at a normal commercial rate from the date of expropriation until the date of payment.

2. The amount of compensation shall be in a freely convertible currency at the prevailing market rate of exchange for that currency on the valuation date and shall be paid without delay to the person entitled thereto without regard to its residence or domicile and shall be freely transferable within such period as is normally required for the completion of formalities transfer.

The said period shall commence on the day on which the relevant request has been made and may not exceed one month.

3. The Investor affected shall have a right under the law of the contracting party making the expropriation, to a judicial or other competent authority of that Contracting Party to prompt review of its case, including the valuation of its investment and the payment of compensation in accordance with the principles set out in this article.

4. When a Contracting Party shall expropriate assets of a corporation incorporated under the laws in force in any part of its own territory, and in which investors have participation of the other Contracting Party, shall ensure the application of the provisions of this article to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

## **Article 6. 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, revolution, state of national emergency, revolt, civil disturbance or other similar events shall be accorded by the latter Contracting Party, by way of restitution, indemnification, compensation or other settlement, a treatment no less favourable than that which that Contracting Party accords to its own investors to investors or of any third State, whichever is more favourable to the investor concerned. the resulting payments shall be freely transferable.

2. Notwithstanding paragraph 1, 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: (1), 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) The requisitioning of its investment or part thereof by the authorities or forces of the latter; or
- b) The destruction of its investment or part thereof by the authorities or forces of the latter, without requiring the necessity of the situation,

The latter Contracting Party shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective. the resulting payments shall be made without delay and shall be freely transferable.

## **Article 7. Transfers**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of all payments relating to their investments. such transfers shall include in particular, though not exclusively:

- a) The initial capital and additional amounts to maintain or expand the investment;
- b) Profits, dividends, interests, capital gains, royalties and fees;
- c) The funds in repayment of loans related to an investment;
- d) The compensation under articles 5 and 6; articles 5 and 6;
- e) The proceeds from the sale or the total or partial liquidation of an investment;
- f) Other earnings and remuneration of personnel engaged from abroad in connection with an investment;
- g) Payments arising out of the settlement of a dispute.

2. Transfers shall be made without delay in a freely convertible currency and at the rate of exchange applicable on the date of transfer. transfers shall be made in the tax obligations established by the law in force in the host contracting party.

3. The Contracting Parties undertake to accord to transfers referred to in paragraphs 1 and 2 of this article a treatment no less favourable than that accorded to transfers originating from investments made by any third estado. apartados 1 and 2 of

this article a treatment no less favourable than that accorded to transfers originating from investments made by any third State.

## **Article 8. Other Provisions**

1. If the legislation of either Contracting Party or existing obligations under international law or subsequently arise between the Contracting Parties in addition to this Agreement contain rules whether general or specific), which is to be granted to investments made by investors of the other contracting party to a more favourable treatment than that provided for by the present Agreement, such rules shall prevail over this agreement to the extent that they are more favourable.
2. More favourable terms than those of this Agreement which one of the Contracting Parties has agreed to investors of the other Contracting Party shall not be affected by this Agreement.
3. Nothing in this Agreement shall affect the provisions laid down by international agreements relating to existing Intellectual Property Rights on the date of its signature.

## **Article 9. Subrogation**

If a Contracting Party or its designated agency for a payment to any of its investors under an agreement on compensation or guarantee or a contract of insurance against non-commercial risks given in respect of an investment in the territory of the other contracting party, the latter shall recognise the assignment of any such right or claim of the investor to former Contracting Party or its designated agency and the right of the former Contracting Party or its designated agency by subrogation to exercise such right or claim to the same extent as its predecessor in title. the subrogation will ensure that the first Contracting Party or its designated agency is direct beneficiary of any payment of compensation or other redress that might be entitled to the investor.

## **Article 10. Settlement of Disputes between the Contracting Parties**

1. Any dispute between the contracting parties concerning the interpretation or application of the provisions of this Agreement shall be settled through consultation and negotiation through diplomatic channels.
2. If both Contracting Parties cannot reach an agreement within six months after the beginning of the dispute through diplomatic negotiations, the dispute shall be submitted, at the request of either of the two contracting parties to an arbitral tribunal shall be constituted as follows:  
  
Each Contracting Party shall appoint one arbitrator and these two arbitrators shall elect a Chairman who shall be a national of a third State which has diplomatic relations with both contracting parties.
3. If one of the Contracting Parties has not appointed its arbitrator and has not followed 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 the two arbitrators cannot reach an agreement about the designation of the Chairman within two months of the appointment of the Chairman 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 in paragraphs 3 and 4 of this article, the President of the International Court of Justice is prevented from discharging the 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 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 any of the Parties contratantes.apartados 3 and 4 of this article, the President of the International Court of Justice is prevented from discharging the 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 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 of the Contracting Parties.
6. Subject to other provisions agreed by the contracting parties, the tribunal shall determine its procedure. the tribunal shall reach its decisions by a majority of votes.
7. The decisions of the Tribunal shall be final and binding for each Contracting Party.
8. The arbitral tribunal shall decide on the basis of the provisions of this Agreement as well as of the generally accepted principles of international law.

9. Each Contracting Party shall bear the cost of its own member of the Tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the contracting parties. however, the Tribunal shall decide which one of the Contracting Parties shall bear a higher proportion of costs and this decision shall be binding on both contracting parties.

## **Article 11. Settlement of Disputes between Investors and a Contracting Party of the other Contracting Party**

1. Disputes between a Contracting Party and an investor of the other Contracting Party shall be notified in writing, including detailed information by the investor Contracting Party to the recipient of the investment. any dispute between a Contracting Party and an investor of the other Contracting Party shall be settled by mutual agreement.

2. If the dispute cannot be settled amicably within six months from the date of the written notification by which has been notified to the other contracting party to the dispute, the investor concerned may submit it to its own choice:

The competent court of the Contracting Party in whose territory the investment has been made;

To an ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);

The International Centre International Centre for Settlement of Investment Disputes (ICSID) under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington DC on 18 March 1965, in the event both contracting parties have signed this Agreement.

3. Once a dispute has been submitted to the competent court of the Contracting Party concerned or to international arbitration, the choice of one or other of the procedure shall be final.

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, including the rules relating to conflicts of law, and the Rules and the universally accepted principles of international law.

5. The arbitral decisions shall be final and binding on the parties to the dispute. each Contracting Party undertakes to execute the decisions in accordance with its national legislation.

## **Article 12. Consultation and Exchange of Information**

1. Any Contracting Party may propose to the other contracting party for consultations on any matter concerning the interpretation or application of this Agreement. the other Contracting Party hosting the proposal to the greater understanding and shall accord adequate opportunity for such consultations.

2. At the request of either of the Contracting Parties shall exchange information on laws, regulations, administrative practices or policies and procedures of the other contracting party.

## **Article 13. Scope**

This Agreement shall apply to investments made in the territory of a Contracting Party, in accordance with its laws and regulations by investors of the other contracting party before as well as after the Entry into Force of this Agreement. however, this Agreement shall not apply to any dispute that arose before its Entry into Force.

## **Article 14. Entry Into Vigor. Duration and Termination**

1. This Agreement shall enter into force on the latter date on which either notifies the other Contracting Party that its internal legal requirements for the Entry into Force of this Agreement.

2. This Agreement shall remain in force for an initial period of ten years. after the expiry of the initial period of ten years and shall continue in force indefinitely unless either contracting party notifies the other in writing of its decision to terminate this Agreement. the notice of denunciation shall become effective one year after it has been received by the other contracting party.

3. With respect to investments made prior to the effective date of the notification of denunciation of this Agreement, the provisions of this Agreement shall remain in effect for a further period of ten years from the date of denunciation of this Agreement.

Done in duplicate at Madrid on 20 June 2005 in English, Macedonian and English languages, all texts being equally authentic. in case of divergence of interpretation, the English text shall prevail.

The Spanish Government,

Miguel Ángel Moratinos Cuyaubé,

Ministry of Foreign Affairs and Cooperation

The Macedonian Government,

Ilinka Mitreva,

Minister of Foreign Affairs