

# AGREEMENT BETWEEN THE REPUBLIC OF SERBIA AND THE KINGDOM OF DENMARK ON ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

Preamble

The Republic of Serbia and the Kingdom of Denmark (hereinafter referred to as the Parties)

In order to create favorable conditions for investment in the two countries and to intensify cooperation between undertakings of the two countries, with special emphasis on encouraging the efficient use of natural resources,

Convinced that fair and equitable treatment of investments on a reciprocal basis to serve that purpose,

Have agreed as follows:

## 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 shall include in particular, though not exclusively the following types of assets:

(a) tangible and intangible, movable and immovable property and other rights, such as leases, mortgages, pledges, collateral, usufruct, guarantees and other similar property rights;

(b) shares, stocks, bonds, and other forms of participation in a company, bonds and receivables;

(c) reinvested income, financial and performance claims in accordance with the contract having an economic value;

(g) industrial and intellectual property rights, including copyrights, patents, trade names, technology, trademarks, goodwill, know-how and other similar rights;

(e) concessions and other rights acquired in accordance with the law or by contract, including concessions for exploration, extraction and use of natural resources.

2. Change the form in which assets are invested shall not affect their character as investments.

3. The term "returns" means the monetary amounts yielded by an investment and includes, in particular, but not exclusively, profit, interest, capital gains, dividends, royalties or fees.

4. The term "investor" means:

(a) a natural person who is a citizen or a national or resident in the territory of one of the Parties in accordance with its laws.

(b) any legal entity established or recognized by the law of that Contracting Party as a legal entity such as companies, firms, associations, development finance institutions, foundations or similar entities irrespective of whether they are established in a limited liability company or not, regardless of whether their activities are based on profit.

5. The term "territory" means:

(a) With respect to the Republic of Serbia: The territory over which the Republic of Serbia has sovereign rights and jurisdiction in accordance with their national legislation and international law.

(b) With respect to the Kingdom of Denmark: The territory surrounded with land borders, as well as the sea, seabed and

subsoil beyond the territorial waters over which the Kingdom of Denmark achieved, in accordance with their national legislation and international law, sovereign rights or jurisdiction.

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

1. Each Party shall grant investments of investors of the other Party in its territory in accordance with its own legislation and administrative practice and encourage such investments, including the granting of exemptions for the opening of representative offices.
2. Investments of investors of each Contracting Party shall, at any time, on the territory of the other Contracting Party shall enjoy fair and equitable treatment and full protection and security. None of the Parties shall, in its territory, unreasonable or discriminatory measures interfere with the investors of the other Contracting Party in the management, maintenance, use, enjoyment or disposal of his investment.
3. Each Party shall carefully consider any liability that may arise in relation to the investments of investors of the other Party.

## **Article 3. Investment Treatment**

1. Each Party shall provide in its territory investments of investors of the other Party treatment which shall in no case be less favorable than the treatment provided to investments of its own investors or investments of investors of third States, whichever is the aspect of investors, favorable.
2. Each Party shall guarantee in its territory, to investors of the other Party, in respect of the management, maintenance, use, enjoyment or disposal of their investment, fair and equitable treatment which in no case shall be less favorable than that granted to its own investors or from investors of any third country, whichever is the aspect of investors, favorable.

## **Article 4. Exceptions**

The provisions of this Agreement relating to the provision of treatment which is no less favorable than that provided by each Party to its own investors or investors of any third country, shall not be construed as an obligation of the Contracting Party to investors of the other Contracting Party on its territory gives any advantage treatment, preferences or privileges resulting from:

- (a) current or future membership in any regional economic integration organization or customs union, which is a member of the Party is or may become, or
- (b) any international agreement or arrangement relating wholly or partly to taxation or any domestic laws that are wholly or partly refers to taxation.

## **Article 5. Expropriation and Compensation**

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 Party, except when the expropriation performed in the public interest, on a non-discriminatory basis, conducted with the mandatory application of the law, and with prompt, adequate and effective compensation.
2. Such compensation shall correspond to the fair market value of the expropriated investment immediately before the expropriation or before the expropriation became publicly known fact, which is determined in such a way to express the value of the investment (hereinafter the "valuation day").
3. The fair market value will be calculated in freely convertible currency on the basis of the market rate for the currency that existed at the date of valuation. Compensation will be paid immediately and shall include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment and shall be freely transferable.
4. Damaged investor will have the right, in accordance with the laws of the Contracting Party making the expropriation, the urgent consideration of his case by a court or other independent authority of that Party, in connection with the valuation of its investment and the payment of compensation, in accordance with the principles referred to in paragraph 1 of this Article.
5. When a Party expropriates assets of a company or enterprise in its territory, it is established or constituted in accordance with its laws, and in which investors of another Party have an investment, the provisions of this Article shall apply in terms of providing urgent, adequate and effective compensation for those investors who suffer any injury or impairment of market

value of such investments due to its expropriation.

## **Article 6. Compensation for Losses**

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer damage due to war or other armed conflict, revolution, a state of emergency, revolt, insurrection or riots, the other Party shall provide, in terms of compensation, compensation, restitution or other compensation modes damage, treatment that is as favorable as the treatment that this Party gives its own investors or investors of any third state, depending on which of them, in terms of investors, favorable.

2. Without prejudice to the provisions of paragraph 1 of this Article, investors of one Contracting Party who, in any of the situations mentioned in that paragraph, suffer damage in the territory of the other Party, which is the result of:

(a) the seizure of assets belonging to them, by the power authority or authorities of the other Contracting Party, or

(b) destruction of their property by the authorities of power or authority of the other Contracting Party that it was not necessary due to the situation,

provide restitution and compensation, which will in any case be without delay, fair and efficient and will be freely transferable.

## **Article 7. Transfer of Capital and Income**

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

(a) share capital and any additional capital for the maintenance or development of the investments;

(b) equity or that remaining from the sale or liquidation of investments in whole or in any part thereof;

(c) interest, shares, profit and other income generated;

(d) payments made for the repayment of loans for investment and debt based on interest rates;

(e) payments deriving from rights enumerated in Article 1, paragraph 1, item d) of this Agreement;

(f) unspent earnings and other income of employees engaged from abroad in connection with the investment;

(g) compensation, restitution, compensation and other costs determined in accordance with Art. 5 and 6 of this Agreement;

(h) payments arising from the settlement of disputes in accordance with Art. 9 and 10 of this Agreement.

2. Transfers of payment referred to in paragraph 1 of this Article shall be made without delay, in freely convertible currency.

3. Transfers shall be effected at the market rate charged at the date of transfer with respect to the transaction in the currency in which the transfer is done. In the absence of the foreign exchange market, the exchange rate will be used, which is closest to the accounting rate applicable in the country for investment.

4. The rights referred to in this Article shall apply without prejudice to the measures adopted by the European Community in accordance with Article 57 (2), 59 and 60 of the Treaty establishing the European Community.

## **Article 8. Transfer of Rights (Subrogation)**

1. If one Contracting Party or its authorized agency makes payment to its own investors under a guarantee it has made an investment in the territory of the other Party, the other Party shall recognize:

(a) the transfer of the first Contracting Party or its authorized agency, under the law or pursuant to a legal transaction, of all rights and claims of the investor, and

(b) that the first Contracting Party or its authorized agency on the basis of subrogation, entitled to exercise rights or claims of that investor realized.

2. The rights and claims in this way transferred to subrogation can not exceed the original rights and claims of the investor.

3. Subrogation rights and obligations of investors obeteenog also apply to transfer payments made in accordance with Article 7 of this Agreement.

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

1. Any dispute relating to investments between an investor of one Contracting Party and the other Contracting Party shall be settled, if possible, friendly.

2. If the dispute can not be resolved in this manner within six months from the submission of a written request to be addressed by investors, each Party shall give consent to submit the dispute to resolve, at the option of investors, the competent court of the Contracting Party or by the International Court of Arbitration one of the following ways:

(a) The International Center for the Settlement of Investment Disputes, to be settled by an arbitral tribunal in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature in Washington on March 18, 1965, if both Contracting Parties are parties to that Convention ; or

(b) in accordance with the added benefit of the Centre, if the Centre is not available under the Convention; or

(c) ad los arbitration tribunal established under the Arbitration Rules of the United Nations Commission on Trade Law (UNCITRAL). The notified body in accordance with these rules shall be the General Secretariat of ICSID; or

(d) Court of Arbitration in accordance with the arbitration rules of the International Chamber of Commerce (ICC).

3. For the purposes of this Article and Article 25 (2) (b) of the said Washington Convention, any legal entity established in accordance with the legislation of one Contracting Party and which, before a dispute arises, was controlled by investors of the other The Contracting Parties shall be treated as a legal person of the other Party.

4. Any arbitral tribunal in accordance with paragraph 2, point b) to g) of this Article shall, at the request of any party to the dispute, be held in a country that is a member of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed New York, 10 June 1958 (New York Convention).

5. The consent given by any Contracting Party referred to in paragraph 2 of this Article on the submission of a dispute by an investor to international arbitration shall be the written consent and written agreement between the parties to the dispute to submit it in accordance with Section II of the Washington Convention (Jurisdiction of the Center), and, in case of application of the Additional Facilitation Rules, in accordance with Article 1 of the UNCITRAL Arbitration Rules, the ICC Arbitration Rules and Article II of the New York Convention.

6. At any stage in which it is included in an investment dispute, the Parties shall not stand in his own defense, as a counter-argument or for any other reason, that it has received redress or compensation for damage suffered in the investment fully or partially paid under the contract of insurance or guarantee.

7. The arbitration award rendered in accordance with this Article shall be final and binding on the parties to the dispute. Each Contracting Party shall promptly implement the provisions of such a judgment and ensure its execution in its territory.

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

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

2. If the dispute in accordance with paragraph 1 of this Article may not be resolved within six (6) months, it shall, at the request of either Contracting Party, be submitted for decision to an international arbitral tribunal.

3. The arbitral tribunal shall be constituted on an ad los basis, as follows: each Contracting Party shall appoint one member of the tribunal and these two members shall select the third member - a citizen of a third country, which will, with the agreement of both Parties, be appointed Chairman of the arbitral tribunal. These members of the arbitral tribunal shall be appointed within two (2) months from the date one Contracting Party has notified the other of its intention to submit the dispute to resolve the arbitration court, the President shall be appointed within two (2) months after the appointment of two arbitrators.

4. If within the periods specified in paragraph 3 of this Article shall not constitute an arbitral tribunal, each 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 the International Court of Justice is a national of either one or the other Party, or if it is

otherwise unable to perform this function, the Vice President shall be sought from the International Court of Justice to make the necessary appointments. If the Vice President of the International Court of Justice is a national of either one or the other Party, or if he is unable to perform this function, each Party may request that the next in seniority member of the International Court of Justice, which is not a national of either one or the other Party, conduct the necessary appointments.

5. The arbitral tribunal shall determine its own procedure of work.

6. The arbitral tribunal shall decide on the basis of the provisions of this Agreement, as well as the accepted rules of international law. Decisions will be made by majority vote; The decisions will be final and binding.

7. Each Contracting Party shall bear the costs of participation of its arbitrator and of its representatives in the arbitration proceedings. The costs of Chairman and the remaining costs shall be borne equally by both Parties. The arbitral tribunal may, however, by its decision to establish a different allocation of costs.

## **Article 11. Consultation**

Any Party may propose the other hold consultations on any matter concerning the application of this Agreement. These consultations will be held on the proposal of one Contracting Party at the time and place as may be agreed through diplomatic channels.

## **Article 12. Implementation of the Agreement**

The provisions of this Agreement shall apply to all investments that carry out the investors of one Contracting Party in the territory of the other Contracting Party before or after the coming into force of this Agreement. They, however, do not apply to disputes that have arisen prior to its entry into force.

## **Article 13. Changes and Additions**

At the time of the entry into force of this Agreement, or at any time thereafter, the provisions of this Agreement may be amended in the manner to be agreed between the Parties. These amendments will enter into force when the Parties notify each other that the constitutional requirements necessary for its entry into force have been met.

## **Article 14. Territorial Application**

This Agreement shall not apply to the Faroe Islands and Greenland.

The provisions of this Agreement may be extended to the Faroe Islands and Greenland as may be agreed between the Parties exchange notes.

## **Article 15. Entry Into Force**

The Contracting Parties shall notify each other when they met the constitutional procedures prescribed for the entry into force of the Agreement. The Agreement shall enter into force on the thirtieth day after the receipt of the last of the two notifications.

## **Article 16. Duration and Termination of the Agreement**

1. This agreement is concluded for a period of ten years. It will automatically continue to be valid until one Contracting Party in writing notifies the other Party of its intention to terminate the Agreement. Notice of termination will become applicable one year after the date of notification.

2. In the case of investments realized before the expiry of this Agreement the provisions of its Articles. from 1 to 12 will continue to be in force over the next ten years from that date.

IN WITNESS WHEREOF the undersigned person, duly authorized by their respective Governments, signed this Agreement.

Done in Copenhagen on 15 May 2009 in two originals, each in Serbian, Danish and English, where all texts being equally authentic.

In case of divergence of interpretation, the English text shall prevail.

FOR THE REPUBLIC OF SERBIA

Vuk Jeremic, signature

FOR THE KINGDOM OF DENMARK

Per Stig Muller, signature