

Agreement between the Government of the Republic of Macedonia and the Federal Government of the Federal Republic of Yugoslavia on Reciprocal Promotion and Protection of Investments

The Federal Republic of Yugoslavia and the Government of the Republic of Macedonia, hereinafter referred to as "Parties to the Agreement",

Anxious to create favourable conditions for enlargement of economic cooperation between the Parties to the Agreement,

Desirous of creating and maintaining favourable conditions for mutual investments,

Convinced that stimulating and protecting of investments contributes to strengthening of entrepreneurial initiatives and so considerably contributes to development of economic relations between the Parties to the Agreement,

Have agreed as follows:

Article 1. Definitions

1. For the purpose of this Agreement:

The expression "investments" shall stand for each kind of funds invested by the investor of one Party to the Agreement in the territory of the other Party to the Agreement, in conformity with its laws and regulations and shall comprise especially but not exclusively: (a) Movable and real estate property and all other property rights in rem, such as mortgage, pledge and guarantee;

(b) Shares, bonds and other types of securities and shares in companies;

(c) Financial claims or any other claims under the Agreement having economic value;

(d) Intellectual property rights, such as copyrights and other related rights and industrial property rights such as patents, licences, industrial design or models, trademarks, as well as good-will, technical processes and know-how;

(e) Concessions in conformity with laws and regulations of the Party to the Agreement in territory of which the investment is made, including concessions for researches, mine-working and exploitation of natural resources.

Change of form the investments are made in shall not have influence on their character as investments. 2. The expression "investor" shall stand for each natural person or legal entity of one Party to the Agreement investing in the territory of the other Party to the Agreement:

(a) A natural person having citizenship of one Party to the Agreement investing in the territory of the other Party to the Agreement.

(b) A legal entity established, founded or in any other way properly organized in conformity with laws and regulations of one Party to the Agreement, having a head office in the territory of that Party to the Agreement and investing in the territory of the other Party to the Agreement.

3. The expression "returns" shall stand for the returns brought by an investment, and comprises, especially but not exclusively, profit, capital gain, dividends, reinvested capital, interests, author's royalties, patent and licence compensations, as well as other similar compensations.

4. The expression "territory" shall stand for:

(a) With regard to the Federal Republic of Yugoslavia: territory of the Federal Republic of Yugoslavia including the area enclosed by terrestrial borders, as well as the sea area, seabed and its underground out of the territorial sea to which it has

sovereign rights and jurisdiction in conformity with laws and regulations and international law;

(b) With regard to the Republic of Macedonia: territory of the Republic of Macedonia including the land area, sea areas and air space to which it has sovereign rights and jurisdiction, in conformity with laws and regulations and international law.

Article 2. Stimulation and Protection of Investments

1. Each Party to the Agreement shall stimulate and create favourable conditions for the investors of the other Party to the Agreement to make investments in its territory and approve such investments in conformity with its laws and regulations.

2. The investments of the investors of any Party to the Agreement shall enjoy at any time an equitable and fair treatment, full protection and safety in the territory of the other Party to the Agreement.

Article 3. National Treatment and the Most Favoured Nation Treatment

1. Each Party to the Agreement shall provide in its territory a fair and equitable treatment of the investments of the investors of the other Party to the Agreement. That treatment shall not be less favourable than the treatment each Party to the Agreement provides to the investments of its own investors or to the investors of any third country.

2. Each Party to the Agreement shall provide the investors of the other Party to the Agreement, in its territory, with regard to management, maintenance, exploitation, enjoyment or disposal over their investments, a treatment no less favourable than the one provided to its own investors or the investors of third countries, depending on which one is more favourable.

3. Provisions of paragraphs 1 and 2 of this Article shall not be interpreted so to oblige one Party to the Agreement to give the investors of the other Party any preference in treatment, preferentials or privileges the former Party may assign to:

(a) Customs union, free trade zone, monetary union or any similar international agreement founding such unions or other forms of regional cooperation, whose signatory any Party to the Agreement is or may become, or

(b) Any international agreement or arrangement referring in its entirety or partly to taxation.

Article 4. Retrieval of Losses

The investors whose investments have suffered losses in the territory of the other Party to the Agreement, as a consequence of war or any other armed conflict, state of emergency, rebellion, uprising or riots in the territory of the other Party to the Agreement, shall be provided, with regard to returns, reimbursement, compensation or any other way of loss retrieval, a treatment no less favourable than the one the other Party to the Agreement provides to its own investors or the investors of any third country. Payment on the quoted grounds shall be made with no unnecessary delay and shall be freely transferable.

Article 5. Expropriation

The investments of the investors of any Party to the Agreement shall not be nationalized, expropriated, or subjected to measures by effect equal to expropriation or nationalization (hereinafter referred to as: "expropriation") in the territory of the other Party to the Agreement, except in public interest. Expropriation shall be conducted by enforcement of law, on non-discriminatory basis, along with an adequate compensation, which shall be effected with no unnecessary delay. Such a compensation shall correspond to the market value of the investment expropriated, immediately prior to expropriation or before the forthcoming expropriation becomes widely known fact, depending on what happens first, it shall include the interest calculated according to LIBOR, on the annual level, until the payment date, and it shall be paid with no unnecessary delay no longer than 3 months, and freely transferable

Article 6. Transfers

1. Each Party to the Agreement, upon payment of all fiscal and other obligations of the investors of the other Party to the Agreement, shall guarantee the investors of the other Party, in conformity with laws and regulations of the former Party to the Agreement, free transfer of payments referring to their investments, and especially but not exclusively:

(a) Capital and additional amounts for maintenance or enlargement of investments;

(b) Returns in accordance with Article 1 of this Agreement;

- (c) Funds from discharge of credits and loans;
- (d) Incomes from an entire or partial sale and liquidation of investments;
- (e) Amounts paid for the purpose of Article 4, 5 and 7 of this Agreement.

2. Transfers from paragraph 1 of this Article shall be performed with no unnecessary delay in convertible currency, according to the official exchange rate applicable on the transfer day in the territory of the Party to the Agreement where the transfer is realized.

Article 7. Subrogation

1. If a Party to the Agreement, or its authorized institution, makes payment to its own investors according to a guarantee approved for the investment in the territory of the other Party to the Agreement, the other Party to the Agreement shall recognize:

- (a) Assignment according to law or in conformity with legal transaction of any right or claim of the investor of the former Party to the Agreement or its authorized institution, as well as
- (b) That the former Party to the Agreement, or its authorized institution, according to subrogation, shall be empowered to realize the rights or claims of the investor and shall take over the obligations referring to the investments.

2. Subrogated rights or claims shall not exceed prime rights or claims of the investor.

3. Subrogation of rights and obligations of the insured investor shall also refer to the payment transfer performed in accordance to Article 6 of this Agreement.

Article 8. Settlement of Disputes between the Parties to the Agreement

1. Disputes of the Parties to the Agreement in relation to interpretation or implementation of this Agreement shall be settled, to the utmost extent, through negotiations between the Parties to the Agreement.

2. If a dispute between the Parties to the Agreement fails to be settled in that manner within six months from the beginning of negotiations, it shall be submitted, at the request of one Party to the Agreement, to an arbitration court.

3. Arbitration Court from paragraph 2 of this Article shall be constituted, on ad hoc basis, for each individual case, as follows: within three months following the reception of an arbitration request, each Party to the Agreement shall appoint one member to the court. Those two members shall select the third member to the court – a citizen of a third country, who shall be, with consent of both Parties to the Agreement, appointed the president of the arbitration court.

4. If the arbitration court fails to be constituted within terms defined in paragraph 3 of this Article, both of the Parties to the Agreement may request the president of the International Court of Justice, in absence of any other agreement, to perform the necessary appointment. If the president is a citizen of any of the Parties to the Agreement, or in any other way unable to perform that function, the vice president shall be required to perform the necessary appointment. If the vice president is also a citizen of any of the Parties to the Agreement, or also unable to perform that function, a member of the International Court of Justice subsequent according to seniority being not a citizen of any of the Parties to the Agreement shall be asked to perform the necessary appointments.

5. Arbitration court shall make decisions pursuant to provisions of this Agreement, as well as widely accepted principles and rules of the international law. Arbitration court shall make decisions by majority of vote. Those decisions shall be final and binding for both Parties to the Agreement. The court shall establish its own work procedure.

6. Each Party to the Agreement shall bear costs of its member to the court and his/her participation in arbitration procedures. The costs of the president and other costs shall be equally at the expense of both Parties to the Agreement.

Article 9. Settlement of Disputes between a Party to the Agreement and an Investor of the other Party to the Agreement

1. Disputes between an investor of one Party to the Agreement and the other Party to the Agreement, in relation to obligations of the other Party to the Agreement, pursuant to this Agreement, in relation to the investments of the investor of the former Party to the Agreement, shall be settled, to the utmost extent, through negotiations.

2. If the disputes quoted in paragraph 1 of this Article fail to be settled through negotiations, within six months from the day

of a written notice on a dispute occurrence, both of the Parties in dispute shall be entitled to submit the request for settlement to a competent court of the Party to the Agreement being a party in dispute.

3. Instead of applying provisions of paragraph 2 of this Agreement each of the parties in dispute may forward the dispute to an arbitration settlement to:

(a) An ad hoc arbitration court pursuant to Arbitration rules of the UN Commission for the International Trade Law (UNCITRAL), or

(b) International Centre for settlement of investment disputes, in case that both Parties to the Agreement are signatories of the Convention on settlement of investment disputes between countries and other countries' citizens, opened for signing in Washington, on 18 March 1965 (Convention ICSID).

4. The judgment shall be final and binding for both parties in dispute and shall be implemented in conformity with laws and regulations of the Party to the Agreement in whose territory the investment is realized.

Article 10. Application of other Provisions

If the laws of the Parties to the Agreement and current and future international agreements between the Parties to the Agreement or other international agreements whose signatories are the Parties to the Agreement, consist of provisions by which investments of other Party's investors are given a treatment more favourable than the treatment provided by this Agreement, such laws and agreements shall, to the extent they are more favourable in, prevail over this agreement.

Article 11. Consultations

Representatives of the Parties to the Agreement shall hold consultations, when necessary, in relation to the issues referring to application of this agreement. Consultation shall be held, at the suggestion of one Party to the Agreement, in place and at time agreed through diplomatic channels.

Article 12. Application of the Agreement

This Agreement shall apply to the investments in the territory of one Party to the Agreement, which, in conformity with its laws and regulations, the investors of the other Party to the Agreement make following the date of entry into force of this Agreement.

Article 13. Entry Into Force, Continuation and Expiration of the Agreement

1. This Agreement is subjected to ratification and shall enter into force on the day of exchange of ratification instruments.

2. This Agreement shall be concluded for the period of ten years and shall automatically continue to be in force in successive ten year periods, unless one Party to the Agreement informs in written the other Party to the Agreement, at least 12 (twelve) months before the expiration, on its intention to terminate the Agreement.

3. Where the investments are realized before the completion period of this Agreement, provisions of Articles 1 to 12 shall be applicable further on within the next ten-year period, following that date.

As a ratification of the abovementioned, the undersigned persons, properly empowered by their Governments, signed this Agreement.

Done in Skopje, on the day of 4 September 1996, in two originals in Serbian, Macedonian and English, where all texts shall be equally authentic. In case of any discrepancy in interpretation, the text in English shall prevail.