

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

The Federal Government of the Federal Republic of Yugoslavia and the Government of Belarus hereinafter referred to as Contracting Parties,

Desiring to create favourable conditions for greater investment by nationals and companies of one State in the territory of the other State;

Recognizing that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both States;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

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

- (1) movable and immovable property and in any other property rights such as mortgages, liens or pledges;
- (2) shares in and stock and debentures of a company and any other form of participation in a company;
- (3) claims to money or to any performance under contract having an economic value;
- (4) intellectual property rights, such as copyrights and other neighbouring rights, patents, licences, industrial designs or models, trade marks as well as goodwill, technical processes and know-how;
- (5) concessions conferred by law or under contract permitted by law, including concessions to search for, cultivate, extract or exploit natural resources.

A change in the form in which assets are invested does not affect their character as investments.

2. The term "returns" shall mean the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees;

3. The term "investor" shall mean:

- (1) any natural person having the nationality of the Federal Republic of Yugoslavia or of the Republic of Belarus respectively in accordance with the laws in force in the territory of the Federal Republic of Yugoslavia and in the territory of the Republic of Belarus respectively and making investments in these respective territories.
- (2) any legal entity incorporated, constituted or otherwise duly organized under the laws in force in the territory of the Federal Republic of Yugoslavia and in the territory of the Republic of Belarus respectively and making investments in these respective territories.

4. The term "territory" shall mean:

- (1) in respect of the Federal Republic of Yugoslavia: the territory under its sovereignty, it being understood that territory includes land, internal waters and the territorial sea, and the sea, seabed and its subsoil over which the Federal Republic of Yugoslavia exercises, in accordance with its national legislation and international law, sovereign rights or jurisdiction.

(2) in respect of the Republic of Belarus: the territory under its sovereignty, it being understood that territory includes land, internal waters and the territorial sea, and the sea, seabed and its subsoil over which the Republic of Belarus exercises, in accordance with its national legislation and international law, sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investment

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory, and, subject to its right to exercise powers conferred by its laws, shall admit such investments.

2. Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

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

1. Neither Contracting Party shall in its territory subject investments or returns of investors of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State.

2. Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own investors or to investors of any third State.

3. For the avoidance of doubt it is confirmed that the treatment provided for in paragraphs 1 and 2 above shall apply to the provisions of Articles 1 to 12 of this Agreement.

4. The provisions of paragraphs 1, 2 and 3 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from:

(1) any existing or future customs union or similar international agreement to which either of the Contracting Parties is or may become a party, or

(2) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 4. 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, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be made without undue delay and shall be freely transferable.

2. Without prejudice to paragraph 1 of this Article, 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) requisitioning of their property by its forces or authorities, or

(2) destruction of their property by its forces or authorities, which was not caused in combat action or was not required by the necessity of the situation, shall be accorded restitution or adequate compensation. Resulting payments shall be made without undue delay and shall be freely transferable.

Article 5. Expropriation

Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose. The expropriation shall be carried out under due process of law, on a

nondiscriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the real value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest calculated on the LIBOR basis until the date of payment, shall be made without delay, be effectively realizable and be freely transferable. The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

Article 6. Repatriation of Investment and Returns

1. Each Contracting Party shall, upon payment of all fiscal and other financial obligations of investors of the other Contracting Party, guarantee to such investors of the other Contracting Party free transfer of payments related to their investments and returns. Such transfer shall include in particular, though not exclusively:

- (1) returns;
- (2) amounts to maintain or increase investment;
- (3) funds in repayment of loans;
- (4) proceeds of sale or liquidation of investment;
- (5) compensation paid pursuant to Articles 4 and 5 of this Agreement.

2. Transfers of payments referred to in paragraph 1 of this Article shall be made without undue delay, in the convertible currency in which the investment was originally made or in any other convertible currency according to the laws and regulations in force of the Contracting Party concerned, at the official exchange rate applicable on the date of transfer in the Contracting Party, where the investment has been made.

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

1. Disputes between an investor of one Contracting Party and the other Contracting Party concerning the obligations of the latter arising from this Agreement in relation to an investment made by such investor of the first Contracting Party, shall be settled, as far as possible, through negotiations.

2. If the dispute referred to in paragraph 1 of this Article cannot be settled within three months from the date when either party to the dispute requested settlement through negotiations, the investor concerned may submit the dispute for settlement to a competent court of the Contracting Party which is a party to the dispute.

3. Instead of resorting to the provisions of paragraph 2 of this Article, the investor concerned may choose to submit the dispute for settlement through arbitration to:

- an ad hoc arbitral tribunal according to the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);
- the International Centre for the Settlement of Investment Disputes, in the event that both Contracting Parties are parties to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington on 18 March 1965 (ICSID Convention');
- any other international arbitration institution.

4. The award shall be final and binding on both parties to the dispute and shall be enforced in accordance with the legislation of the Contracting Party in whose territory the investment has been made.

Article 8. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through the diplomatic channel.

2. If a dispute between the Contracting Parties cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two 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 who or approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two 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 if he 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 if he too 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 by a majority of votes. Such decision shall be binding on both Contracting Parties. 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. The tribunal shall determine its own procedure.

Article 9. Subrogation

1. If one Contracting Party or its designated Agency ("the first Contracting Party") makes a payment under a guarantee given in respect of an investment in the territory of the other Contracting Party, ("the second Contracting Party"), the second Contracting Party shall recognize:

(1) the assignment to the first Contracting Party by law or by legal transaction of all the rights and claims of the indemnified investor, and

(2) that the first Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the indemnified investor.

2. The first Contracting Party shall be entitled in all circumstances to the same treatment as the indemnified investor in respect of:

(1) the rights and claims acquired by it by virtue of the assignment, and

(2) any payments received in pursuance of those rights and claims, as the indemnified investor was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns. Such payments shall be freely transferable.

Article 10. 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 the present Agreement contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement such rules shall to the extent that they are more favourable prevail over the present Agreement.

Article 11. Consultations

Representatives of the Contracting Parties shall hold consultations, when necessary, concerning matters related to interpretation or application of the present Agreement. These consultations shall be held at the proposal of one of the Contracting Parties at a time and place to be agreed upon through the diplomatic channel.

Article 12. Application of the Agreement

The provisions of this Agreement shall apply to investments by investors of one Contracting Party in the territory of the other Contracting Party:

- made after the date of entry into force of this Agreement, and

- made prior to the date of entry into force of this Agreement being applicable to this investments from the date of entry into force of the present Agreement.

Article 13. Entry Into Force, Duration and Termination

1. The present Agreement is subject to ratification and shall enter into force thirty days after the date of the exchange of instruments of ratification.
2. This Agreement is concluded for a period of ten years and shall thereafter be automatically extended for successive periods of five years unless either Contracting Party notifies in writing, at least twelve months prior to its date of expiry, to the other Contracting Party its decision to terminate the present Agreement.
3. With respect to investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 12 shall remain in force for a further period of ten years from that date of termination.

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

Done in duplicate at Minsk this 6 day of March 1996 in the Serbian, Belarusian, and English languages, all texts being equally authentic. In case of divergences, the English text shall prevail.

For the Federal Government of the Federal Republic of Yugoslavia

For the Government of the Republic of Belarus