

AGREEMENT

BETWEEN THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA

AND

THE GOVERNMENT OF THE REPUBLIC OF GHANA

FOR

THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

1

The Federal Government of the Federal Republic of Yugoslavia and the Government of the Republic of Ghana (hereinafter referred to as the "Contracting Parties"),

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

Recognizing that the reciprocal encouragement and protection under bilateral 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:

a) "investment" means every kind of assets invested by nationals or companies of one Contracting Party in the territory of the other Contracting Party in accordance with laws and regulations of the latter and in particular, though not exclusively, includes:

(i) movable and immovable property and any other property rights such as mortgages, liens or pledges;

(ii) shares in and stock, securities, debentures, and any other form of participation in a company;

1

2

(iii) claims to money or to any performance under contract having a financial value;

(vi) intellectual property rights, such as copyrights and related rights, industrial property rights, such as patents, industrial designs or models, trade marks, technical process, know-how and goodwill;

(v) concessions conferred by law and regulations of the Contracting Party or under contract in the territory where the investment is being made, 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.

(b) "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes: profit, interest, capital gains, dividends, royalties and fees;

(c) "nationals" means natural persons having the nationality of one Contracting Party and making investments in the territory of the other Contracting Party;

(d) "(Companies" means corporations, firms and associations incorporated or constituted under law in force in the territory of the respective Contracting Parties;

(e) "territory" means:

(i) in respect of the Federal Republic of Yugoslavia the area encompassed by land boundaries as well as the sea, seabed and its subsoil beyond the territorial sea over which the Contracting Party, in accordance with its national laws and regulations and international law exercises sovereign rights or jurisdiction

(ii) in respect of Ghana the present territory of the Republic of Ghana including the territorial sea and any maritime area situated beyond the territorial sea of Ghana which has been or might in the future be designated under the national law of Ghana in accordance with international law as an area within which Ghana may exercise rights with regard to the sea-bed and subsoil and the natural resources;

Article 2. Promotion of Investment

Each Contracting Party shall encourage and create favourable conditions for nationals or companies of other Contracting Party-'to invest

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Capital in its territory, and, subject to its rights to exercise powers conferred by its laws, shall admit such capital.

Article 3. Protection of Investments

(1) Investments of nationals or companies 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

(2) 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 nationals or companies of the other Contracting Party.

(3) Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party.

Article 4. National Treatment and Most-favoured-nation Provisions

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

(2) Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which is accorded to its own nationals or companies or to nationals or companies of any third State.

Article 5. Exceptions

The provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the nationals or companies of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the other, the benefit of any treatment, preference or privilege resulting from:

4

a) any economic, customs or monetary union or similar international agreement to which either of the Contracting Parties is or may become a party, or

b) any international agreement or arrangement relating wholly or partially to taxation.

Article 6. Compensation for Losses

(1) Nationals or companies of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, revolution, civil disturbance^ state of national emergency, revolt,

insurrection, or riot 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 nationals or companies or to nationals or companies of any third state. Resulting payments shall be freely transferable and shall be made without delay.

Article 7. Expropriation

(1) Investments of nationals or companies 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, a Contracting Party expropriates the investments of nationals or companies of the other Contracting Party, the following conditions shall be complied with:

(a) The measures shall be accompanied by provision for the payment of compensation amounting to the full and genuine value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge whichever is the earlier.

(b) The compensation shall include interest calculated in accordance with national policy and shall be effectively realisable and freely transferable.

(c) The compensation shall be paid without undue delay and shall in any case not exceed one month after which period interest shall be paid.

(2) A national or company 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 Party, of his or its investment in accordance with the principles set out in paragraph (1) of this Article.

Article 8. Repatriation of Investment and Returns

Each Contracting Party shall, in respect of investments, guarantee to nationals or companies of the other Contracting Party the unrestricted transfer to the country where they reside of their investments and returns. Transfers of currency shall be effected without undue delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the investor and the Contracting Party concerned. Unless otherwise agreed by the nationals or companies transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force in the territory of the Contracting Party where the investment was made. Provided however that this provision shall not preclude the affected nationals or companies from honouring their fiscal or other obligations owed to the host Contracting Party.

Article 9. Subrogation

(1) If one Contracting Party or its designated Agency makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment to the former Contracting Party or its designated Agency by law or any legal transaction of all the rights and claims of the party indemnified and that the former Contracting Party or its designated Agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the Party indemnified.

(2) The former Contracting Party or its designated Agency shall be entitled in all circumstances to the same treatment in respect of the rights and claims acquired by it by virtue of the assignment and any payments received in pursuance of those rights and claims as the party indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

(3) Any payments received by the former Contracting Party or its designated Agency in pursuance of the rights and claims freely available to the former Contracting Party for the purpose of meeting any expenditure incurred in the territory of the latter Contracting Party.

Article 10. Settlement of Disputes between an Investor and a Host State

(1) Disputes between a national or company of one Contracting Party and the other Contracting Party concerning an obligation of the latter under this Agreement in relation to an investment of the former which have not been amicably settled shall within a period of three months from written notification of a claim, be submitted for settlement to a competent court of

The Contracting Party which is a party to dispute or to international arbitration.

(2) Where the dispute is referred to international arbitration, the investor and the Contracting Party concerned in the dispute may agree to refer the dispute either to:

(a) the International Center for the Settlement of Investment Disputes (the Convention of the Settlement of Investment Disputes between states and nationals of other states, opened for signature at Washington DC on 18 March 1965, and the Additional Facility for the Administration of Conciliation;; Arbitration and fact-finding Proceedings), where the both Contracting Parties are signatories to the Convention, or

(b) an international arbitrator or ad hoc arbitration tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law.

(3) If after a period of three months from written notification of the claim there is no agreement to one of the above alternative procedures, the parties to the dispute shall be bound to submit it to arbitration under the arbitration rules of the United Nations Commission on International Trade Law as then in force. The parties to the dispute may agree in writing to modify these rules.

Article 11. 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.

7

(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 on 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 period 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 functions, 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 also is prevented from discharging the said function, the Member of the International Court of Justice next in seniority shall be invited to make the necessary appointment's.

(5) The arbitration tribunal shall reach its decision primarily on the basis of the provisions of this Agreement as well as of the generally accepted principles and rules of international law.

(6) 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 may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

Article 12. Application of other Rules

If the provision of law of either Contracting Party or obligations under international law existing at present or established hereafter between Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by nationals or companies of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such laws and agreements shall to the extent that they are more favourable prevail over the present Agreement.

Article 13. Consultations

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

Article 14. Application of the Agreement

The provisions of this Agreement shall apply to investments made by nationals or companies of one Contracting Party prior to as well as after the date of entry into force of this Agreement, and shall be applicable from the date of entry into force of this Agreement.

Article 15. Entry Into Force

Each Contracting Party shall notify the other in writing of the completion of the constitutional formalities required in its territory for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of the two notifications.

Article 16. Duration and Termination

This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other: provided that in respect of investments made whilst the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of fifteen years from the date of termination and without prejudice to the application thereafter of the rules of general international law.

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

Done in duplicate at Accra this 25th day of April 2000 in the Serbian and English languages, both texts being equally authentic. In case of divergence in interpretation the English text shall prevail.

FOR THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA Z

FOR/THE GOVERNMENT THE REPUBLIC OF GHANA