

# **Agreement between the Government of the People's Republic of China and the Government of the Federal Republic of Yugoslavia Concerning the Reciprocal Encouragement and Protection of Investments**

The Government of the People's Republic of China<sup>1</sup> [sic] and the Government of the Federal Republic of Yugoslavia (hereinafter referred to as the Contracting Parties),

Intending to create favorable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the reciprocal encouragement, promotion and protection of such investment will be conducive to stimulating business initiative of the investors and will increase prosperity in both States;

Desiring to intensify the economic cooperation of both States on the basis of equality and mutual benefits;

Have agreed as follows:

## **Article 1. Definitions**

For the purpose of this Agreement,

1. The term "investment" means every kind of assets invested by investors of one Contracting Party in the accordance with the laws and regulations of the other Contracting Party in the territory of the Latter, and in particular, though not exclusively, includes:

(1) Movable, immovable property and other property rights such as mortgages and pledges;

(2) Shares, stocks, bonds, and any other kind of participation in companies;

(3) Claims to money or to any other performance having an economic value;

(4) Copyrights, industrial property, know-how and goodwill;

(5) Concessions conferred by law or under Contract permitted by law, including concessions to search for or, cultivate, extract or exploit natural resources.

2. Then term "investor" means:

(1) In the case of the People's Republic of China, any natural person who has nationality of the People's Republic of China;

In the case of the Federal Republic of Yugoslavia, any natural person who has nationality of the Federal Republic of Yugoslavia, having a residence or domicile in its territory;

(2) Any legal person, including companies, having a seat in the territory of the Contracting Party, constituted in accordance with the laws and regulations of that Contracting Party.

3. Then term "returns" means the amounts yielded by investments, such as profits, dividends, capital gains, interests, royalties or other income.

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

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investment in its territory and admit such investment in accordance with its laws and regulations.

2. Each Contracting Party shall grant assistance in and provide facilities for obtaining visa and working permit to a national of the other Contracting Party to or in the territory of the Former in connection with activities associated with such investments.

3. Investments of investors of either 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.

### **Article 3. Treatment of Investment**

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 investors of any third State.

2. In addition to the provisions of paragraph 1 of this Article either Contracting Party shall, to the extent possible, accord treatment in accordance with the stipulations of its laws and regulations to the investments of investors of the other Contracting Party, the same as that accorded to its own investor paragraph 1 of this Article either Contracting Party shall, to the extent possible, accord treatment in accordance with the stipulations of its laws and regulations to the investments of investors of the other Contracting Party, the same as that accorded to its own investor

3. The provisions of paragraphs 1 and 2 of this Article shall nor be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of a treatment, preference or privilege resulting from: paragraphs 1 and 2 of this Article shall nor be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of a treatment, preference or privilege resulting from:

(1) Any existing or future customs union, free trade area similar international agreement or agreement for facilitating border trade 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 the avoidance of double taxation.

### **Article 4. Expropriation**

Investments of investors of either Contracting Party shall not be expropriated, nationalized or subject to measures having effect equivalent to expropriation or nationalization (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public (general) purpose related to the internal needs of that Contracting party and against reasonable compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge and shall include interest at a normal rate until the date of payment. The compensation shall be made without undue delay, effectively realizable and freely transferable.

### **Article 5. Compensation for Losses**

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, 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, if any, no less favorable than that which the latter Contracting Party accords to investors of any third State. Resulting payments shall be freely transferable.

### **Article 6. Transfer**

1. Each Contracting Party shall, subject to its laws and regulations, grant investors of the other Contracting Party, upon the meeting of all due obligations, the transfer of the investments and returns held in the territory of the other Contracting Party, including:

(1) Capital and additional funds necessary for maintenance and development of an investment;

(2) Capital gains, profits, dividends, interests and other income;

(3) Proceeds from a total or partial liquidation of an investment;

(4) Royalties and fees.

2. Each Contracting Party shall, subject to its laws and regulations, upon the meeting of all due obligations, grant assistance in transferring earnings of a national of the other Contracting Party who works in connection with an investment in territory

of the Contracting Party.

3. The transfers mentioned above shall be made at the prevailing exchange rate of the Contracting Party accepting the investment the date of transfer.

## **Article 7. Subrogation**

If a Contracting Party or its Agency makes payment to an investor under a guarantee it has granted to an investment of such investor in the territory of the other Contracting Party, such other Contracting Party shall recognize the transfer of any right claim of such investor to the former Contracting Party or Agency and recognize the subrogation of the former Contracting Party or its Agency to such right or claim.

## **Article 8. Settlement of Disputes between the Contracting Parties**

1. Any dispute between the Contracting Parties concerning interpretation or application of this Agreement shall, as far as possible, be settled by consultation.
2. If a dispute cannot thus be settled within six months shall, upon the request of either Contracting Party, be submitted to an ad hoc arbitral tribunal.
3. Such tribunal comprises of three arbitrators. Within two months from the date on which either Contracting Party receives the written notice requesting for arbitration from the other Contracting Party, each Contracting Party shall appoint one arbitrator. Those two arbitrators shall, within further two months, together select a third arbitrator who is a national of a third State which has diplomatic relations with both Contracting Parties. The third arbitrator shall be appointed by the two Contracting Parties as Chairman of the arbitral tribunal.
4. If the arbitral has not been constituted within four months from the date of receipt of the written notice for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator (s) who has or have not yet been appointed. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the next most senior member of the International Court of Justice who is not a national of either Contracting Party shall be invited to make the necessary appointment (s).
5. The arbitral tribunal shall determine its own procedure. The tribunal shall reach its decision in accordance with the provisions of this Agreement and the principles of International law recognized by both Contracting Parties.
6. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties. The ad hoc arbitral tribunal shall, upon the request of either Contracting Party, explain the reasons of its decision.
7. Each Contracting Party shall bear the cost of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the Chairman and the tribunal shall be borne in equal parts by the Contracting Parties.

## **Article 9. Settlement of Disputes between an Investor and a Contracting Party**

1. Any dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.
2. If the dispute cannot be settled through negotiations within six months, either party to the dispute shall be entitled to submit the dispute to the competent court of the Contracting Party accepting the investment.
3. If a dispute involving the amount of compensation for expropriation cannot be settled within six months after resort to negotiations as specified in Paragraph 1 of this Article, it may be submitted at the request of either party to the International Centre for Settlement of Investment Disputes (ICSID) or to an ad hoc arbitral tribunal. The provisions of this Paragraph shall not apply if the investor concerned has resorted to the procedure specified in the Paragraph 2 of this Article. Paragraph 1 of this Article, it may be submitted at the request of either party to the International Centre for Settlement of Investment Disputes (ICSID) or to an ad hoc arbitral tribunal. The provisions of this Paragraph shall not apply if the investor concerned has resorted to the procedure specified in the Paragraph 2 of this Article.
4. Such an arbitral tribunal shall be constituted for each individual case in the following way: each party to the dispute shall appoint an arbitrator, and these two shall select a national of a third State which has diplomatic relations with the two Contracting Parties as Chairman. The first two arbitrators shall be appointed within two months of the written notice for

arbitration by either party to the dispute to the other, and the Chairman be selected within four months. If within the period specified above, the tribunal has not been constituted, either party to the dispute may invite the Secretary General of the International Centre for Settlement of Investment Disputes to make the necessary appointments. If the Secretary General is a national of either Contracting Party or is otherwise prevented from discharging the said function, the next most senior member of the International Centre for Settlement of Investment Disputes who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The tribunal shall determine its own procedure. However, the tribunal may, in the course of determination of procedure, take a guidance the Arbitration Rules of the International Center for Settlement of Investment Disputes.

6. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both parties to the dispute. Both Contracting Parties shall commit themselves to the enforcement of the decision in accordance with their respective domestic law.

7. The tribunal shall adjudicate in accordance with the law of the Contracting Party of the dispute accepting the investment including its rules on the conflict of laws, the provisions of this Agreement as well as the generally recognized principles of international law accepted by both Contracting Parties.

8. Each party to the dispute shall bear the cost of its appointed member of the tribunal and of its representation in the proceedings. The cost of the appointed Chairman and the remaining costs shall be borne in equal parts by the parties to the dispute.

## **Article 10. Other Rights and Obligations**

If the legislation of either Contracting Party or international obligations existing at present or established hereafter between the Contracting Parties in addition to this Agreement result in position entitling investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such position shall not be affected by the Agreement. Each Contracting Party shall observe any commitment accordance with its laws additional to those specified in the Agreement entered into by the Contracting Party, its investors with investors of the other Contracting Party as regards the investments.

## **Article 11. Consultation**

1. The representatives of the two Contracting Parties shall have meeting from time to time for the purpose of:

- (1) Reviewing the implementation of this Agreement;
- (2) Exchanging legal information and investment opportunities;
- (3) Resolving dispute arising out of investments;
- (4) Forwarding proposals on promotion of investment;
- (5) Studying other issues in connection with investment.

2. Where either Contracting Party requests consultation on matters of Paragraph I of this Article, the other Contracting Party shall give prompt response and the consultation be held alternation in Beijing and Belgrade. Paragraph I of this Article, the other Contracting Party shall give prompt response and the consultation be held alternation in Beijing and Belgrade.

## **Article 12. Entry Into Force**

This Agreement shall enter into force on the first day of the following month after the date on which both Contracting Parties have notified each other in writing that their respective internal legal procedures have been fulfilled.

## **Article 13. Pre-agreement Investments**

The present Agreement shall apply to investments in the territory of a Contracting Party made in accordance with its legislation by investors of the other Contracting Party prior to the entry into force of this Agreement, being applicable to these investments from the date of its entry into force. However, the Agreement shall not apply to disputes that have arisen before its entry into force.

## **Article 14. Duration and Termination**

1. This Agreement shall remain in force for a period of ten years and shall continue in force if either Contracting Party fails give a written notice to the other Contracting Party to terminate this Agreement.
2. After the expiration of the initial ten-year period, either Contracting Party may, at any time thereafter terminate the Agreement by giving at least one year's written notice to the other Contracting Party.
3. With respect to investments made prior to the date termination of this Agreement, the provisions of this Agreement shall continue to be effective for a further period of five years from such date of termination.

Done in duplicate at Beijing on DEC. 18, 1995 in the Chinese, Serbian and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of the People's Republic of China

For the Government of the Federal Republic of Yugoslavia