

# AGREEMENT BETWEEN THE REPUBLIC OF AUSTRIA AND THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE PROMOTION AND MUTUAL PROTECTION OF INVESTMENTS

THE REPUBLIC OF AUSTRIA AND THE UNION OF SOCIALIST SOVIET REPUBLICS,

Hereinafter referred to as the 'Contracting Parties'

IN THE EFFECT TO create favorable conditions for investments by investors of a Contracting Party in the territory of the other Contracting Parties,

TAKING INTO ACCOUNT that the promotion and mutual protection of these investments will foster the development of mutually beneficial cooperation in the fields of trade, business, science and technology,

HAVE AGREED AS FOLLOWS:

## Article 1.

(1) In this agreement

(a) the term "investment" shall include all types of assets invested by an investor of a Party in the territory of the other Party in accordance with the legislation of the latter Party, and in particular:

(i) immovable property, fixed assets, equipment and other tangible assets; - property and other rights in rem, such as liens, rights of use and other rights securing obligations;

(ii) shares and other forms of participation;

(iii) claims to money given to create economic value or to a service having an economic value; - copyrights, industrial property rights such as the rights of inventors, trade marks, industrial designs, utility models, trade names and technical processes and know-how;

(iv) rights to carry out an economic activity on the basis of an authorisation to explore for and extract natural resources;

b) The term "investor" means

(i) in respect of the Republic of Austria, any natural person having the nationality of the Republic of Austria and any legal person or partnership of commercial law established in accordance with the legislation of the Republic of Austria and established in the territory of the Republic Austria, which invests in the territory of the other Contracting Party,

(ii) in respect of the Union of Soviet Socialist Republics any person who makes an investment in accordance with the legislation of the Union of Soviet Socialist Republics in the territory of the other Contracting Party;

c) The term "income" means any amount which an investment could provide, in particular in the form of profits, royalties, dividends, interest, royalties, commissions, technical assistance and technical services and other charges;

d) The concept of "expropriation" means a nationalization or any other measure having an effect equivalent to the expropriation of a Contracting Party against the investment of an investor of the other Contracting Parties.

(2) This Agreement shall extend to the territory of the Republic of Austria and to the territory of the Union of Soviet Socialist Republics as well as the economic zone and the continental shelf which extend beyond the territorial waters of the Union of Soviet Socialist Republics and over which they shall exercise sovereignty and jurisdiction in accordance with international law For the purpose of exploring, reducing and protecting mineral resources.

## Article 2.

(1) Each Contracting Party shall, in accordance with its legislation, promote investments from investors of the other Contracting Parties in its territory, permit such investments and shall treat them in a fair and equitable manner.

(2) Investments and their income enjoy the full protection of this agreement. The extension or modification of an investment shall be made in accordance with the legislation of the Contracting Party in whose territory the investment was made.

### **Article 3.**

(1) Each Contracting Party undertakes not to treat investment in investors' interests of the other Contracting Parties less favourably in its territory than investing third-country investors.

(2) Each Contracting Party undertakes not to treat the activities of investors of the other Contracting Parties in its territory any less favourably with regard to an investment than the activities of investors of a third State.

(3) The provisions of this Agreement can not be interpreted as meaning that they oblige one of the Contracting Parties to grant to the investors of the other Contracting Parties or their investments preferences or advantages which the first Contracting Party grants or grants to investors of a third State or their investments on the basis thereof,

a) An international agreement relating to a free trade area, customs union, common market, mutual economic assistance organization or an international agreement which entered into force before the signing of this Agreement and which provides for comparable provisions granted by a contracting party to the members of the said organization.

b) An international agreement, an agreement or domestic legislation on tax issues,

c) An agreement to facilitate border trade.

### **Article 4.**

(1) None of the Contracting Parties shall take measures for the expropriation of an investment made in their territory by an investor of the other Contracting Party, except in the public interest. In doing so, the above measures shall be implemented in compliance with the legislation in force in that territory and against payment of compensation. Such measures must not be of a discriminatory nature and compensation must be provided without undue delay. In the event that compensation is not paid within a three-month period from the date on which the decision on the extent of the decision is reached, the investment shall be made from the date of expiry of this period until the date of payment, in accordance with the bank interest rate of the Contracting Party Interest was calculated. The compensation must be transferable from the territory of the one Contracting Party to the territory of the other Contracting Party in freely convertible currency.

(2) The compensation must correspond to the real value of the investment immediately before the actual measure of expropriation has been set or the imminent expropriation has become known.

(3) The investor has the right to review the amount and terms of payment of the compensation by the competent body of the Contracting Party which has set the expropriation measure or by an international arbitration court pursuant to Article 7 of this Agreement.

(4) The provisions of paragraphs (1), (2) and (3) shall also apply to investment income as well as to the proceeds to be paid to the investor in connection with a partial or complete liquidation or disposal of the investment.

### **Article 5.**

(1) Each of the Contracting Parties guarantees the investors of the other Contracting Parties without undue delay the transfer in freely convertible currency of payments relating to investments, in particular from:

a) Investment income;

b) Repayments on the basis of claims on money given to create economic values;

c) The proceeds of the investor's partial or complete liquidation or disposal of his investment;

d) Compensation provided for in Article 4 (1) of this Agreement.

(2) The transfers provided for in this Article shall be made at the exchange rates applicable on the day of the transfer.

(3) The exchange rate and the bank fees shall be determined by the respective banking system in the territory of each of the Contracting Parties. The bank fees will be fair and reasonable.

## **Article 6.**

Where one of the Parties or an institution authorised by it makes payments to its investor under a guarantee for an investment in the territory of the other Party, the latter Party shall recognise the transfer of rights or interests of that investor by operation of law or by virtue of a transaction to the first Party or an institution authorised by it, without prejudice to the rights of the investor of the first Party under Article 7(2) of this Agreement and the rights of the first Party under Article 8(1) of this Agreement. For the transfer of the payments to be made to the Contracting Party concerned or to an institution authorised by it on the basis of the rights transferred, Articles 4 and 5 of this Agreement shall apply *mutatis mutandis*.

## **Article 7.**

(1) Disputes between one of the Contracting Parties and an investor of the other Contracting Parties which relate to the amount or terms of payment of compensation pursuant to Article 4 of this Agreement and the transfer of payments pursuant to Article 5 of this Agreement shall be settled at the negotiating stage.

(2) If such a disagreement can not be settled in this way within three months from the date of the written notification of one of the two parties to the other party, it may at the request of the investor submit to the arbitration of the Stockholm Chamber of Commerce or to an ad hoc arbitration tribunal UNCITRAL arbitration regulations.

(3) The arbitral tribunal makes its decisions on the basis of:

- The provisions of this Agreement;
- The legislation of the Contracting Party in whose territory the investment was made;
- The generally recognized principles and rules of international law.

(4) The decision is final and binding on both parties. Each Contracting Party shall ensure the recognition and enforcement of arbitration in accordance with its relevant legislation.

## **Article 8.**

(1) Disputes between the Contracting Parties regarding the interpretation and application of this Agreement shall be resolved at the negotiating stage. The Contracting Parties shall endeavour to eliminate, by mutual agreement, difficulties arising from the application of this Agreement.

If the dispute cannot be settled in this way, it shall be submitted to arbitration at the request of either Party.

(2) The arbitral tribunal shall be constituted on a case-by-case basis. The Contracting Parties shall each appoint one member of the arbitral tribunal; a citizen of a third country shall be jointly appointed by the two members as chairman of the tribunal. The members of the arbitral tribunal shall be appointed within two months and the chairman of the arbitral tribunal within three months of the date on which one of the parties to the contract has declared its intention to submit the dispute to arbitration.

(3) If the deadlines set out in paragraph 2 are not met, any Contracting Party may, in the absence of any other agreement, contact the President of the International Court of Justice with the request to make the necessary orders.

(4) The arbitral tribunal shall decide by a majority of votes. This decision is binding. Each Contracting Party shall bear the costs associated with the activities of the member of the arbitral tribunal appointed by it; The costs associated with the activities of the chairman of the arbitral tribunal and the remaining costs shall be borne equally by the Contracting Parties. In all other matters, the arbitral tribunal shall determine its own rules of procedure.

## **Article 9.**

This Agreement shall apply to all investments made since 1 January 1956 or to be effected after the entry into force of this Agreement.

## **Article 10.**

(1) This Agreement shall be ratified and shall enter into force on the first day of the third month following the month in which the instruments of ratification have been exchanged.

(2) This Agreement shall be concluded for a period of fifteen years. If neither Contracting Party makes a written declaration of its desire to terminate the Agreement twelve months before the expiry of the specified fifteen-year period by diplomatic means, this Agreement shall remain in force until one of the Contracting Parties terminates it at twelve months' notice.

(3) With regard to investments made before the date of entry into force of the communication on the termination of the validity of this Agreement, the provisions of Articles 1 to 9 of this Agreement shall remain in force fifteen years after that date.

DONE at Moscow, on 8 February 1990, in duplicate in the German and Russian languages, both texts being equally authentic.

For the Republic of Austria:

Dr. Wolfgang Schüssel

For the Union of Soviet Socialist Republics:

Mr. W. S. Pavlov

Moscow, February 8, 1990

Dear Minister,

On the occasion of the signing of the Agreement between the Republic of Austria and the Union of Soviet Socialist Republics on the promotion and mutual protection of investments signed today, I have the honour to inform you of the following:

The provisions of this Agreement cannot be interpreted as meaning that they oblige one of the Contracting Parties to grant to the investors of the other Contracting Parties or their investments preferences or advantages which the first Contracting Party invites investors of a third State or their investments on the basis of the equal treatment laid down in an investment protection treaty in the future.

I have the honour to ask you to give me your consent and to consider the above provisions as an integral part of this Agreement.

Please accept, Sir, the assurance of my highest consideration.

Dr. Wolfgang Schüssel

Federal Minister for Economic Affairs

Mr. W. S. Pavlov

Minister of Finance of the Union of Socialist Soviet Republics

Moscow

THE FINANCIAL MINISTER OF THE UNION OF SOCIALIST SOVIET REPUBLICS

Moscow, February 8, 1990

Dear Minister,

I have the honour to acknowledge receipt of your letter of 8 February 1990 as follows:

"On the occasion of the signing of the Agreement between the Republic of Austria and the Union of Soviet Socialist Republics on the promotion and mutual protection of investments signed today, I have the honour to inform you of the following:

The provisions of this Agreement cannot be interpreted as meaning that they oblige one of the Contracting Parties to grant to the investors of the other Contracting Parties or their investments preferences or advantages which the first Contracting Party invites investors of a third State or their investments on the basis of the equal treatment laid down in an investment protection treaty in the future.

I have the honour to ask you to give me your consent and to consider the above provisions as an integral part of this Agreement.

Please accept, Sir, the assurance of my highest consideration."

I have the honour to give you my consent to the provisions set out in your letter and also to the effect that these provisions should be regarded as an integral part of the Agreement.

Please accept, Sir, the assurance of my highest consideration.

Mr. W. S. Pavlov

Minister of Finance of the USSR

Dr. Wolfgang Schüssel

Federal Minister for Economic Affairs

Vienna