

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SERBIA AND THE GOVERNMENT OF THE PEOPLE 'S DEMOCRATIC REPUBLIC OF ALGERIA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Republic of Serbia and the Government of the People's Democratic Republic of Algeria, (hereinafter referred to as the « Contracting Parties»);

DESIRING to encourage nationals of the other Contracting Party to invest capital, technology and knowledge on its territory;

DESIRING to create and maintain favourable conditions for reciprocal investments,

CONVINCED that the promotion and protection of investments will contribute to the enhancement of entrepreneurial initiative and thereby significantly contribute to the development of economic relations between the Contracting Parties;

HAVE AGREED AS FOLLOWS:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term « investment» shall mean every kind of assets established or acquired 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:

- (i) movable and immovable property as well as other related property rights such as leases, mortgages, liens or pledges ;
- (ii) shares of companies or any other form of participation in companies;
- (iii) stock and debentures as well as other kinds of participation in companies;
- (iv) claims to money or to any performance having an economic value associated with an investment;
- (v) intellectual property rights, such as copyrights and related rights, patents, industrial designs or models, trade marks, as well as goodwill, technical processes and know-how;
- (vi) concessions granted in accordance with the laws and regulations of the Contracting Party in the territory whereof the investment is being made, including concessions to search for cultivate, extract or exploit natural resources.

Any change in the form in which assets are invested shall 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, capital. gains, dividends, interest, royalties and fees,

Reinvested returns shall enjoy the same treatment as the original investment.

3. The term "investor" shall mean:

- (i) a natural person having the nationality of one Contracting Party and making investments in the territory of the other Contracting Party, in accordance with its laws and regulations.
- (ii) a legal entity incorporated, constituted or otherwise duly organized in accordance with the laws and regulations of one Contracting Party, having its headquarters in the territory of that Contracting Party and making investments in the territory of the other Contracting Party.

4. The term "territory" shall mean:

- In the respect of the Republic of Serbia, the area over which the Republic of Serbia exercises, in accordance with its national laws, sovereign rights or jurisdiction.

- In the respect of the People's Democratic Republic of Algeria, the land territory, the territorial sea and beyond it, the various areas of the maritime space over which the People's Democratic Republic of Algeria, in accordance with its national legislation and/or international law, exercises sovereign rights or jurisdiction for the purpose of exploring, exploiting, conserving and managing the natural resources of the seabed, its subsoil and of the waters superjacent to the seabed.

## **Article 2. Promotion and Protection of Investments**

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

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 the territory of the other Contracting Party,

3. Each Contracting Party shall, subject to its laws and regulations, create favourable conditions for the granting of visa and work permits required in its territory in order that the nationals of the other Contracting Party can perform their activities connected to the investment.

## **Article 3. National Treatment and Most-favoured —nation Treatment**

1. Each Contracting Party shall in its territory accord investments of the other Contracting Party with equal treatment that it accords to investments of its own investors or to investments of investors of any third State, whichever is more favourable.

2. Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, treatment equally favourable that it accords to its own investors or to investors of any third State, whichever is more favourable.

3. The provisions of paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege which the former Contracting Party may grant to any third State pursuant to:

(i) any agreement on membership in economic union, customs union, free trade zone, monetary union or similar international agreement establishing such unions or other forms of regional cooperation to which either of the Contracting Parties is or may become a party, or

(ii) any international agreement or arrangement relating wholly or partially 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, 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, equally favourable that which the latter Contracting Party accords to its own investors or to investors of any third State.

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:

(i) requisitioning of their property by the authorities of the other Contracting Party, or

(ii) destruction of their property by the authorities of the other Contracting Party,

which was not caused in combat action, or was not required by the necessity of the situation,

shall be accorded fair and adequate compensation for the loss suffered during the requisitioning or resulting from the destruction of their properties.

## **Article 5. Expropriation**

1. Investments made by investors of either Contracting Party shall not be nationalized, expropriated or subjected to any other measure having effect equivalent to nationalization or expropriation (hereinafter referred to as « expropriation ») in the territory of the other Contracting Party, except in case that the public interest has been determinate by the other Contracting Party by the law or in accordance with the law. The expropriation shall be carried out under due process of law, on a non-discriminatory basis and against adequate compensation which shall be effected without undue delay.
2. Such compensation shall correspond to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include adequate interest calculated on the market basis from the date of disposition of expropriated property until the date of payment.
3. The investor affected shall have a right, under the laws and regulations 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 to the valuation of his or its investment in accordance with the principles set out in this Agreement.

## **Article 6. Transfers**

1. Each Contracting Party shall, upon payment of all fiscal and other financial obligations of investors of one Contracting Party, guarantee to the investors of the other Contracting Party, in accordance with its laws and regulations, free transfers of amounts to money related to their investments including in particular, though not exclusively:
  - (i) investment capital and additional amounts to maintain or increase investments;
  - (ii) returns;
  - (iii) proceeds from total or partial liquidation or sale of the investment;
  - (iv) compensation according to Articles 4, 5 and 7 of this Agreement;
  - (v) payments arising out of settlement of a dispute, according to Article 9 of this Agreement;
  - (vi) earnings and other remuneration of personnel engaged from abroad in connection with an investment.
2. Transfers of payments referred to in paragraph 1 of this Article shall be made without undue delay, in convertible currency, in which the capital was originally invested or in any other convertible currency agreed by the investor and the Contracting Party concerned. Transfer shall be made at the official exchange rate applicable on the date of transfer in the territory of the Contracting Party where the investment has been made.

## **Article 7. Subrogation**

1. If one Contracting Party or its designated Agency makes a payment resulting from compensation of losses to its own investors under a guarantee given in respect of an investment in the territory of the other Contracting Party, the other Contracting Party shall recognise:
  - (i) the assignment to the first Contracting Party or its authorized Agency by law or by legal transaction of any rights and claims of the indemnified investor, and;
  - (ii) that the first Contracting Party or its authorized Agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, and shall assume obligations pertaining to the investments.
2. The rights or claims so subrogated the first Contracting Party shall not exceed the original rights or claims of the investor.
3. Subrogation of the rights and obligations of the indemnified investor shall also apply to the transfer of payments effected in accordance with Article 6 of this Agreement.

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

1. Disputes arising between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled, as far as possible, by consultations and negotiations.
2. If a dispute between the Contracting Parties cannot thus be settled within six months from the date of the

commencement of negotiations, it shall, upon the request of either Contracting Party be referred to an arbitration tribunal.

3. The arbitration tribunal referred to in paragraph 2 of this Article shall be constituted on an ad hoc basis for each individual case in the following way; within three months as of receipt of the request for arbitration each Contracting Party shall appoint one arbitrator. Within two months these two arbitrators shall select the third arbitrator who is a national of a third country, who on approval by the two Contracting Parties shall be appointed Chairman of the arbitration tribunal.

4. If the arbitration tribunal is not set up within the periods specified in paragraph 3 of this Article, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice president of the International Court of Justice shall be invited to make the necessary appointments.

5. The arbitration tribunal shall decide on the basis of the provisions of this Agreement as well as of the generally accepted principles and rules of international law. The arbitration tribunal shall decide by a majority vote. Its awards shall be final and binding on both Contracting Parties.

6. Each Contracting Party shall bear the expenses of its own arbitrator and of its representation in the arbitration proceedings. The costs of the Chairman and the remaining expenses 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 9. Settlement of Disputes between an Investor and the Host State**

1. Any dispute arising directly from an investment between one Contracting Party and an investor of the other Contracting Party should be settled amicably between the two parties to the dispute.

2. If the dispute has not been settled within six (6) months from the date on which it was raised in writing, the dispute may, at the choice of the investor, be submitted:

a) to the competent courts of the Contracting Party in whose territory the investment is made; or

b) to international arbitration:

(i) by the International Centre for Settlement of Investment Disputes (CSID), established pursuant 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 (hereinafter referred to as the "Centre"); or

(ii) to any ad hoc arbitration tribunal which unless otherwise agreed on by the parties to the dispute, is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. An investor who has submitted the dispute to a national court shall not anymore have recourse to international arbitration mentioned in paragraph 2 (b) of this Article, The investor's choice between the competent courts of the Contracting Party in whose territory the investment is made and to international arbitration is irreversible and final.

4. Any arbitration under this Article shall, at the request of either party to the dispute, be held in a state that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), opened for signature at New York on 10 June 1958. Claims submitted to arbitration under this Article shall be considered to arise out of a commercial relationship or transaction for the purposes of Article 1 of the New York Convention.

5. Each Contracting Party hereby gives its unconditional consent to the submission of a dispute between it and an investor of the other Contracting Party to arbitration in accordance with this Article.

6. Neither of the Contracting Parties, which is a party to a dispute, can raise an objection, at any phase of the arbitration procedure or of the execution of an arbitral award, on account of the fact that the investor, which is the other party to the dispute, has received an indemnification covering a part or the whole of its losses by virtue of an insurance.

7. The arbitration tribunal shall take its decisions in accordance with the provisions of this agreement, the laws and regulations of the contracting party involved in the dispute, the rules of conflict of laws which the arbitration tribunal considers applicable, the terms of any specific agreement concluded in relation to the particular investment involved and the relevant principles of international law.

8. The award shall be final and binding on the parties to the dispute and shall be executed in accordance with national law

of the Contracting Party in the territory of which the investments have been made.

## **Article 10. Application of other Rules**

If the laws of either Contracting Party or international agreements existing at present or established hereafter between the Contracting Parties or other international agreements whereof the Contracting Parties are signatories contain provisions entitling investments by investors 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 11. Consultations**

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 12. Application of the Agreement**

The provisions of this Agreement shall apply to investments made by investors of either Contracting Party in the territory of the other Contracting Party, whether made before or after the entry into force of this Agreement, but shall not apply to any dispute concerning an investment, which arose or any claim, which was settled before its entry into force.

## **Article 13. Entry Into Force, Duration, and Termination of the Agreement**

1. Each Party shall inform the other Party about the completion of constitutional procedures that have to be completed in its territory for entering into force of this Agreement. The present Agreement shall enter into force on the date of the receipt of the second of the two notifications.

2. Both Parties may by mutual written consent make amendments to this agreement, Any amendment shall enter into force under the same terms and conditions required for entry into force in this agreement.

3. 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 to the other Contracting Party in writing its decision to terminate the Agreement at least twelve months prior to its date of expiry.

4. With respect to investments made prior to the date of termination of this Agreement, this Agreement shall remain in force for a further period of ten years from the date of the realization of investment.

In witness whereof the undersigned, duly authorised thereto by their respective Governments have signed this Agreement.

Done at Algiers, this 13 day of February 2012 in two originals in Serbian, Arabic and English languages, each text being equally authentic. In the event of any divergence in interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF SERBIA

Nebojsa Cirić

Minister of Economy and Regional Development

FOR THE GOVERNMENT OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA

Abdelmalek Sellal

Minister of Water Resources