# AGREEMENT BETWEEN THE MACEDONIAN GOVERNMENT AND THE GOVERNMENT OF THE KINGDOM OF DENMARK FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

Preamble

The Macedonian Government and the Government of the Kingdom of Denmark hereinafter referred to as the Contracting Parties,

DESIRING to create favourable conditions for invesmtens in both States and to intesify the co-operation between private enterprises in both States with a view to stimulating the productive use of resources,

RECOGNIZING that a fair and equitable treatment of investments on a reciprocal basis will serve this aim,

HAVE AGREED as follows:

## Article 1. Definitions

For the purpose of this Agreement,

(1) The term "investment" means every kind of asset and shall include in particular, but not exclusively:

(a) movable and immovable property, as well as any other rights such as leases, mortgages, liens, pledges, guarantees and any other similar rights,

(b) a company or busness enterprise, or shares, stock or other forms of participation in a company or business enterprise and bonds and debt of a company or business enterprise,

(c) returns reinvested, claims to money and claims to performance purusant to contracts having an economic value,

(d) industrial and intellectual property rights, including copyrights, patents, trade names, technology, trademarks, goodwill, know-how and any other similar rights,

(e) concessions or other rights conferred by law or under contract, including concessions to search for, extract or exploit natural resources.

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

(3) The term "investor" means with respect to each Contracting Party:

(a) Natural persons having the nationality of each Contracting Party in accordance with its

Laws.

(b) Any entity established in accordance with, and recognised as a legal person by the law of that Contracting Party, such as companies, firms, associations, development finance institutions, foundations or similar entities irrespective of whether their liabilities are limited and whether or not their activities are directed at profit.

(4) The term "returns" means the ammounts yielded by an investment and includes in particular, though not exclusively, profit, interest, capital gains, dividends, royalties or fees.

(5) Returns, and in case of reinvestment ammounts yielded from the reinvestment, shall be given the same protection as the investment in accordance with the provisions of this Agreement.

(6) The term "territory" means:

(a) In respect of Macedonian Government, the territory of its State including land, water and airspace over which it exercises, in accordance with international law soverign rights and jurisdiction of such areas.

(b) In respect of the Kingdom of Denmark the territory under its sovereignty as well as maritime zones and continental shelf over which the Kingdom of Denmark exercises sovereign rights or jurisdiction in accordance with international law.

## Article 2. Promotion and Protection of Investment

(1) Each Contracting Party shall admit investments by investors of the other Contracting Party in accordance with its legislation and administrative practice and encourage such investments, including facilitating the establishment of representative offices.

(2) Investments of investors of each Contracting Party shall at all times 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 of disposal of investments in its territory of investors of the other Contracting Party.

## Article 3. Treatment of Investments

(1) Each Contracting Party shall in its territory accord to investments made by investors of the other Contracting Party fair and equitable treatment which in no case shall be less favorable than that accorded to its own investors or to investors of any third State, whichever is the more favorable from the point of view of the investor.

(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 investment, fair and equitable treatment which in no case shall be less favorable than that accorded to its own investors or to investors of any third State, whichever of these standards is the more favorable from the point of view of the investor.

## Article 4. Exceptions

The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extent to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) Membership of any existing or future Regional Economic Integration Organization or customs union of which one of the Contracting Party is or may become a party, or

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

## Article 5. Expropriation and Compensation

(1) Investments of investors of each 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 expropriations made in the public interest, on a basis of non-discrimination, carried out under due process of law, and against prompt, adequate and effective compensation.

(2) Such compensation shall amount to the fair market value of the investment expropriated immediately before the expropriation or impending expropriation became known in such a way as to affect the value of the investment (hereinafter referred to as the "valuation date").

(3) Such fair market value shall be calculated in a freely convertible currency on the basis of the market trade of exchange existing for that currency on the valuation date. Compensation shall be paid promptly and include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment.

(4) The investor affected shall have a right to prompt review under the law of the Contracting Party making the expropriation, by a judicial or other competent and independent authority of that Contracting Party, of its case, of the valuation of its investment, and of the payment of compensation in accordance with the principles set out in paragraph 1 of this Article.

(5) When a Contracting Party expropriates the assets of a company or an enterprise in its territory, which is incorporated or constituted under its law, and in which investors of the other Contracting Party have an investment, including through

shareholding, the provisions of this Article shall apply to ensure prompt, adequate and effective compensation for those investors for any impairment or diminishment of the fair market value of such investment resulting from the expropriation.

## Article 6. 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 favorable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever of these standards is the more favorable from the point of view of the investor.

(2) Without prejudice to paragraph 1 of this Article an investor of a Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in the area of another Contracting Party resulting from

(a) requisitioning of its investment or part thereof by the latter's forces or authorities, or

(b) destruction of its investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

Shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective.

## Article 7. Transfer of Capital and Returns

(1) Each Contracting Party shall with respect to investments in its territory by investors of the other Contracting Party allow free transfer into and out of its territory of:

(a) the initial capital and any additional capital for the maintenance and development of an investment;

(b) proceeds obtained from the sale or liquidation of all or any part of an investment;

(c) returns;

(d) payments made for the reimbursement of the credits for investments, and interest due;

(e) payments derived from rights enumerated in Article 1, paragraph 1, (d), of this Agreement;

(f) unspent earnings and other remuneration of personnel engaged from abroad in connection with an investment;

(g) compensation, restitution, indemnification or other settlement pursuant to Articles 5 and

6.

(2) Transfers of payments under paragraph 1 of this Article shall be effected without delay and in a freely convertible currency.

(3) Transfers shall be made at the market rate of exchange existing on the date of transfer with respect to spot transactions in the currency to be transferred. In the absence of a market for foreign exchange, the rate to be used will be the most recent exchange rate applied to inward investments.

## Article 8.

Subrogation

If one Contracting Party or its designated agency makes a payment to its own investors under a guarantee or insurance it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) the assignment, whether under the law or pursuant to a legal transaction, of any right or claim by the investor to the former Contracting Party or to its designated agency and

(b) that the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor.

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

(1) Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of that other Contracting Party shall, as far as possible, be settled amicably.

(2) If such a dispute between an investor of one Contracting Party and the other Contracting Party continues to exist after a period of six months, investor shall be entitled to submit the case either to:

(a) international arbitration of the International Center for Settlement of Investment Disputes established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington D.C on 18 March 1965 (ICSID Convention), or

(b) an arbitrator or international ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law, or

(c) by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC).

(3) The arbitration tribunal shall decide the dispute in accordance with provisions of this Agreement and the applicable rules and principles of international law. The awards of arbitration shall be final and binding on both parties to the dispute. Each Contracting Party shall carry out without delay any such award, and such award shall be enforced in accordance with international law.

## Article 10. Disputes between the Contracting Parties

(1) If any dispute arises between the Contracting Parties concerning the interpretation and application of this Agreement, the Contracting Parties shall, as far as possible, try to settle any such dispute through negotiations.

(2) If such a dispute cannot be settled within six months from the beginning of the dispute, it, shall upon the request of either Contracting Party, be submitted to an arbitration tribunal.

(3) Such an arbitration tribunal shall be constituted for each individual case in the following way:

(a) Within three 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 Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within three months from the date of appointment of the other two members.

(b) If within any of the periods specified 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.

(c) The arbitration tribunal shall apply the provisions of this Agreement, other Agreements concluded between the Contracting Parties, and the procedural standards called for by international law. It shall reach its decision by a majority of votes. The arbitration tribunal determines its own procedure.

(d) The decisions of the tribunal are final and binding upon the Contracting Parties to the dispute.

(e) Each Contracting Party shall bear the cost of its own member of the tribunal and of the representation in the arbitration proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

## Article 11. Consultations

Each Contracting Party may propose to the other Party to consult on any matter affecting the application of this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a place and at a time agreed upon through diplomatic channels.

## Article 12. Applicability of this Agreement

The provisions of this Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party prior to or after the entry into force of the Agreement. It shall, however, not be applicable to divergences or disputes which have arisen prior to its entry into force.

## Article 13. Amendments

At the time of entry into force of this Agreement or at any time thereafter the provisions of this Agreement may be amended in such manner as may be agreed between the Contracting Parties. Such amendments shall enter into force when the Contracting Parties have notified each other that the constitutional requirements for the entry into force have been fulfilled.

## Article 14. Territorial Extension

This Agreement shall not apply to the Faroe Islands and Greenland.

The provisions of this Agreement may be extended to the Faroe Islands and Greenland as may be agreed between the Contracting Parties in an Exchange of Notes.

## Article 15. Entry Into Force

The Contracting Parties shall notify each other when the constitutional requirements for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force thirty days after the date of the last notification.

## Article 16. Duration and Termination

(1) This Agreement shall remain in force for a period of ten years. It shall remain in force thereafter until either Contracting Party notifies in writing the other Contracting Party of its intention to terminate this Agreement. The notice of termination shall become effective one year after the date of notification.

(2) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall remain in force for a further period of ten years from that date.

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

Done in two original versions at _ on _ 20_ in the

Macedonian, Danish and English languages, all texts being equally authentic.

In the case of divergence of interpretation, the English text shall prevail.

For the Macedonian Government

For the Government of the Kingdom of Denmark