

AGREEMENT BETWEEN THE REPUBLIC OF ALBANIA AND THE REPUBLIC OF SLOVENIA ON RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Republic of Slovenia and the Republic of Albania (hereinafter referred to as the Contracting Parties);

DESIRING to intensify their economic cooperation to the mutual benefit of both countries on a long-term basis;

INTENDING to create and maintain favourable conditions for investments by investors of either Contracting Party in the territory of the other Contracting Party;

RECOGNIZING that the encouragement and protection of investments on the basis of the present Agreement will stimulate the initiative in this field;

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purposes of this Agreement:

1. "Investment" shall mean every kind of asset invested by an investor of one Contracting Party, provided that they have been made in accordance with the laws and regulations of the other Contracting Party, and shall include in particular though not exclusively:

a) Movable and immovable property and any other rights in rem, such as servitudes, mortgages, liens, pledges and similar rights; in rem, such as servitudes, mortgages, liens, pledges and similar rights;

b) Shares, stocks and other securities and any other form of interests in a company;

c) Loans, claims to money or to any performance under contract having an economic value and accompanied by an investment;

d) Copyrights, industrial property rights (such as patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), know-how and goodwill;

e) Any right conferred by law or under contract and any licenses and permits pursuant to law, including the concessions to search for, extract, cultivate or exploit natural resources.

Any change in the form of an investment, admitted in accordance with laws and regulations of the Contracting Party on whose territory the investment was made, does not affect its character as an investment.

2. "Returns" shall mean the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties, fees and other income.

3. "Investor" shall comprise with regard to either Contracting Party:

In respect of the Republic of Slovenia:

a) The term "natural person" which shall mean natural persons having the nationality of the Contracting Party;

b) The term "legal person" which shall mean legal entities, including companies, corporations, business associations and other organizations, which are constituted or otherwise duly organized under the law of that Contracting Party and have their seat, together with economic activities, in the territory of that Contracting Party;

In respect of the Republic of Albania:

a) The term "natural person" which shall mean any natural person having the nationality of that Contracting Party in accordance with its laws;

b) The term "legal person" which shall mean any entity incorporated or constituted in accordance with, and recognized as a legal person by its laws, having permanent residence in the territory of that Contracting Party.

4. "Territory" shall mean in respect of either Contracting Party the territory under its sovereignty as well as the territorial waters, the continental shelf and submarine areas over which that Contracting Party exercises, in conformity with international law, sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investment

1. Each Contracting Party shall promote on its territory investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.

2. Returns from the investments and, in cases of approved reinvestment, the income ensuing therefrom shall enjoy the same protection as the major 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. Protection and Treatment of Investments

1. Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale and should it so happen, liquidation of such investments.

2. Each Contracting Party shall ensure within its territory fair and equitable treatment of the investments of the investors of the other Contracting Party. This treatment shall not be less favourable than that granted by each Contracting Party to investments made within its territory by its own investors, or made within its territory by investors of any third State, if this latter treatment is more favourable.

3. The treatment of the most favoured nation shall not apply to privileges which either Contracting Party accords to investors of a third State because of its membership in or association with a free trade area, customs union, common market or organization for regional economic cooperation or to an existing or future convention on the avoidance of double taxation or a convention on other fiscal matters.

Article 4. Expropriation

1. Investments by investors of either Contracting Party shall not be expropriated, nationalized or subjected to any other measure the effects of which would be tantamount to expropriation or nationalization in the territory of the other Contracting Party, except for the public benefit and against prompt, adequate and effective compensation, and always under due process of law and without discrimination. Such compensation shall be equivalent to the market value of the expropriated investment immediately before the date on which the actual or threatened expropriation, nationalization or comparable measure has been taken or become publicly known, whichever is earlier.

The compensation shall be paid without undue delay, and shall carry the current bank interest until the time of payment. It shall be effectively realizable and freely transferable.

Provision shall have been made in an appropriate manner at or prior to the time of expropriation, nationalization or comparable measure for the determination and payment of such compensation.

2. Investors of either Contracting Party shall enjoy most favoured nation treatment in the territory of the other Contracting Party in respect of the matters provided for in this Article.

Article 5. Compensation for Losses

Investors of either Contracting Party who suffer losses of their investments on the territory of the other Contracting Party due to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot, shall be accorded with respect to restitution, indemnification, compensation or other settlement, no less favourable treatment than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall

whenever possible be freely transferable without undue delay.

Article 6. Transfer

1. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investments a free transfer of payments in freely convertible currency relating to these investments, particularly but not exclusively:

- a) Capital and additional amounts to maintain or increase the investment;
- b) Profits, interest, dividends and other current income;
- c) Funds in repayment of loans regularly contracted and documented and directly related to a specific investment;
- d) Royalties and other fees;
- e) The proceeds from a total or partial sale or liquidation of the whole or any part of an investment;
- f) Personal earnings of foreign citizens employed by the foreign investor, according to the laws and regulations of each Contracting Party.

2. Transfers in freely convertible currency shall be effected without undue delay at the prevailing market rate of exchange for commercial transactions on the date of the transfer, in accordance with the procedures established by the Contracting Party in whose territory the investment was made.

Article 7. Subrogation

1. If a Contracting Party or any agency thereof makes a payment to any of its investors under a guarantee or insurance it has contracted in respect of an investment, the other Contracting Party shall recognize the validity of the subrogation in favour of the former Contracting Party or agency thereof to any right or title held by the investor.

The Contracting Party or any agency thereof which is subrogated in the rights of an investor shall be entitled to the same rights as those of the investor and to the extent that they exercise such rights. They shall do so subject to the obligations of the investor pertaining to such insured investment.

2. In the case of subrogation as defined in paragraph 1 above, the investor shall not pursue a claim unless authorized to do so by the Contracting Party or any agency thereof. paragraph 1 above, the investor shall not pursue a claim unless authorized to do so by the Contracting Party or any agency thereof.

Article 8. Applicability of this Agreement

The provisions of this Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party after January 1, 1992, when the Republic of Albania adopted the first law on foreign investment.

Article 9. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through diplomatic channels.

2. If a dispute cannot be thus settled within six months, it shall upon the request of either Contracting Party, be submitted to an Arbitral Tribunal in accordance with the provisions of this Article.

3. The 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. These two members shall then select a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal (hereinafter referred to as the "Chairman"). The Chairman shall be appointed within three months from the date of appointment of the other two members.

4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, a request may be made to the President of the International Court of Justice to make the appointments. If he happens to be 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 appointments. If the Vice-President also happens to be a national of either Contracting Party or 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 appointments.

5. The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting Party shall bear the costs of its own arbitrator and its representation in the arbitral proceedings; the costs of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The Arbitral Tribunal shall determine its own procedure.

Article 10. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment on the territory of that other Contracting Party shall be subject to negotiations between the parties in dispute.

2. If any dispute between an investor of one Contracting Party and the other Contracting Party can not be thus settled within a period of six months from the beginning of such negotiations, the investor shall be entitled to submit the case either to:

- a) The competent court of the Contracting Party in the territory of which the investment has been made; or
- b) The International Centre for Settlement of Investment Disputes (ICSID) having regard to the applicable provisions of 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, in the event both Contracting Parties are parties to this Convention; or
- c) An arbitrator or international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree in writing to modify these Rules. The arbitral awards shall be final and binding on both Parties to the dispute.

Article 11. Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established thereafter between the Contracting Parties in addition to the present Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than that provided for by the present Agreement, such a regulation shall, to the extent that it is more favourable, prevail over the present Agreement.

Article 12. Consultations

Representatives of the Contracting Parties shall, whenever necessary, hold consultations on any matter affecting the implementation 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 13. Entry Into Force, Duration and Termination

1. Each of the Contracting Parties shall notify the other through diplomatic channels of the completion of the procedures required by its law for bringing this Agreement into force. This Agreement shall enter into force on the date of the second notification.

2. This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, one year before the expiry of the initial or any subsequent periods, either Contracting Party notifies the other in writing of its intention to terminate the Agreement.

3. In respect of investments made prior to the termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten years from the date of termination.

Done in duplicate at Bled, this 23rd day of October, 1997, in Slovenian, Albanian and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Republic of Slovenia

Marjan Senjur, (s)

For the Republic of Albania

Shaqir Vukaj, (s)