

# **AGREEMENT BETWEEN THE ARAB REPUBLIC OF EGYPT AND SERBIA AND MONTENEGRO ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Arab Republic of Egypt and Serbia and Montenegro, (hereinafter referred to as the Contracting Parties),

Desiring to create favourable conditions for greater economic cooperation between the Contracting Parties,

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 invested 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 and any other rights in rem such as mortgages, liens or pledges;

(ii) Shares in and stocks and debentures as well as other kinds of securities of a company and any other form of participation in a company;

(iii) Claims to money or any other claim under contract having an economic value;

(iv) 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;

(v) 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.

A 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.

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;

(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 the area encompassed by land boundaries as well as the sea, seabed and its subsoil beyond the territorial sea over which the Contracting Party exercises, in accordance with its national laws and regulations and international law, sovereign rights or jurisdiction.

## **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 its territory of investors of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into way with regard to investments of investors of the other Contracting Party.
3. Each Contracting Party shall 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 treatment no less favourable than that which it accords to investments of its own investors or to investments of investors of any third State, whichever is the 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 no less favourable than that which 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:
  - (i) 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, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be made without undue delay and shall be freely transferable.
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 losses suffered during the requisitioning or resulting from the destruction of their properties. Resulting payments shall be freely transferable and shall be made without undue delay in freely convertible currency.

### **Article 5. Expropriation**

1. Investments 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 the public interest. 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.

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

interest calculated on the LIBOR basis until the date of payment, shall be made without undue delay, and be freely transferable. 2. 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.

3. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the Contracting Party who are owners of those shares.

## **Article 6. Transfers**

1. Each Contracting Party shall, upon payment of all fiscal and other financial obligations of investors of the other Contracting Party, guarantee to the investors of the other Contracting Party, free transfers of payments related to their investments including in particular, though not exclusively:

(i) Capital and additional amounts to maintain or increase investments;

(ii) Returns;

(iii) Repayment of loans;

(iv) Proceeds from total or partial liquidation or sale of the investment;

(v) Compensation according to Articles 4 and 5 of this Agreement;

(vi) Payments arising out of a settlement of a dispute, according to Article 8 and 9;

(vii) Unspent earning of investors employees working in connection with the investment in the territory of the Contracting Party.

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 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 recognize:

(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 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 surrogated 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 - a third country

national 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 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.

5. The arbitration tribunal shall reach its decision 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. The tribunal shall establish its own procedure.

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. Disputes between an investor of one Contracting Party and the other Contracting Party concerning an obligation of the latter under this Agreement in relation to an investment of the former, shall be settled, as far as possible through negotiations.

2. If the dispute referred to in paragraph 1 of this Article cannot be settled by negotiations within three months from written notification of the claim, either party to [he dispute may submit the dispute for settlement to a competent court of the Contracting Party or to international arbitration if the investor concerned so wishes.

3. Where the dispute is referred to international arbitration, the investor and the Contracting Party concerned in the dispute may agree to refer the dispute either to:

(i) An ad hoc arbitral tribunal according to the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(ii) The International Center for the Settlement of Investment Disputes, in the event that both Contracting Parties are parties to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington DC on 18 March 1965 and the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings.

4. The award shall be final and binding on both parties to the dispute and shall be enforced in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

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

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**

Representatives of 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 provision of this Agreement shall apply to investments made by investors of one Contracting Party prior to as well as

after the date of entry into force of this Agreement, and shall be applicable from the date of entry into force of this Agreement.

### **Article 13. Termination of the Previous Agreement**

Entering into force of this Agreement terminate the validity of provisions of the Agreement between the Government of the Socialist Federal Republic of Yugoslavia and the Government of the Arab Republic of Egypt on protection of investments, signed on 3rd of June 1977.

### **Article 14. Entry Into Force, Duration and Termination of the Agreement**

1. Each Party will inform other Party about the finishing of constitutional procedures that have to be done in it's territory for entering into force of this Agreement. The present Agreement shall enter into force on the date of the exchange of instruments of ratification.

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

3. With respect to investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 13 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 at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ in two originals in the Arabic, Serbian and English languages, each text being equally authentic. In the event of any divergence in

FOR THE ARAB REPUBLIC OF EGYPT

FOR SERBIA AND MONTENEGRO