

# **AGREEMENT BETWEEN MONTENEGRO AND THE REPUBLIC OF SERBIA ON MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Republics of Serbia and Montenegro (hereinafter: the Contracting Parties);

In order to encourage citizens of their states to invest capital, technology and knowledge in their territories,

In order to create and maintain favorable conditions for mutual investments,

Convinced that the promotion and protection of investments will contribute to the strengthening of entrepreneurial initiatives and will significantly contribute to the development of economic relations between the Parties,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" means any type of assets acquired by an investor of a Contracting Party by investing funds in the territory of the other Contracting Party in accordance with the laws and regulations in force and includes, in particular, but not exclusively the following forms of assets:

(a) the right of ownership on movable and immovable property and other property rights, such as mortgages, pledges, collateral, usufruct and similar rights;

(b) shares in the capital of companies;

(c) shares, bonds and other types of securities with voting participation (securities);

(d) monetary claims under a loan agreement issued to a company with a maturity of five years or more, if they have the nature of subordinated claims, other than a loan granted to a state-owned company;

(e) intellectual property rights (such as copyright and other related rights, patents, industrial designs or models, trademarks) as well as the right to goodwill, technical processes and know how;

(f) concessions acquired in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made, including concessions for exploration, extraction and use of natural resources.

The change in the form of the asset in which the assets are invested will not affect their character as an investment.

2. The term "income" means the monetary amounts yielded by an investment and includes, in particular, but not exclusively, profit, capital gains, dividends, interest on money-based capital based on investment, intellectual property rights and similar fees.

3. The term "investor" means:

(a) A natural person who holds the nationality of a Contracting Party and invests in the territory of the other Contracting Party, provided that that person is not a national of the other Contracting Party.

(b) A legal entity established, established or otherwise legally organized in accordance with the applicable laws and regulations of a Contracting Party which has its head office in the territory of that Party and which invests in the territory of the other Contracting Party, provided that it is not directly or indirectly in majority ownership of the national of the other Contracting Party.

4. The term "territory" means:

(a) In respect of the Republic of Serbia:

The territory over which the Republic of Serbia exercises sovereign rights and jurisdiction in accordance with their national legislation and international law.

(b) In respect of Montenegro:

The territory of Montenegro, as well as those of the sea surface near the outer limit of the territorial sea, including the seabed and subsoil that fall under the sovereign rights and jurisdiction of Montenegro, in accordance with international law

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

1. Each Contracting Party shall encourage investments from the other Contracting Party and create favorable conditions for investors of the other Contracting Party to invest in its territory and allow such investments in accordance with its applicable legislation.

2. Investments of each Contracting Party's investors shall, at any time, in the territory of the other Contracting Party enjoy a fair and equitable treatment and full protection and security. Neither of the Parties shall interfere with the investor of the other Party in the management, maintenance, use, enjoyment or disposal of his investments on his territory by unreasonable or discriminatory measures.

3. Each Contracting Party shall create favorable conditions for the issuance of visas and work permits required in its territory in order to investors of another Contracting Party may carry out activities related to the investment.

4. Reinvestment of profits realized from investments that are made in accordance with the law of the Contracting Party in whose territory the investment was originally made, shall enjoy the same protection as the original investment.

## **Article 3. National Treatment and Most-favoured Nation Treatment**

1. Each Contracting Party shall in its territory to provide investment the other Contracting Party treatment that is as favorable as the treatment provided to investments of its own investors or investments of investors of third state, whichever is more favorable.

2. Each Contracting Party shall guarantee in its territory, investors of the other Contracting Party, as regards management, maintenance, use and enjoyment of their investments, treatment which is as favorable as the treatment granted to its own investors or investors of third countries, whichever is more favorable.

3. The provisions of paragraphs 1 and 2 of this Article shall not be construed as an obligation of the Contracting Party to give to investors of the other Contracting Party any advantage in the treatment, preference or privilege that the first Contracting Party gives to investors of any third country in the framework:

(a) its present or future membership in the economic union, customs union, free trade area, monetary union or similar international agreement establishing such unions or other forms of regional cooperation, or

(b) Any international agreement or arrangement relating wholly or partly to taxation.

4. The provisions of paragraphs 1 and 2 of this Article shall be construed to require Contracting Parties to submit to any other mechanism for resolving disputes with the investor the other Contracting Party except as expressly provided for in Article 9 of this Agreement.

## **Article 4. Compensation of Losses**

1. The investors of a Contracting Party in the territory of the other Contracting Party that suffer damage due to war or other armed conflict, state of emergency, revolt, insurrection or riots, will be provided in terms of compensation, indemnization, restitution or otherwise damages, a treatment which is as favorable as the treatment that the Contracting Parties gives to its own investors or investors of any third state.

2. Notwithstanding the provisions of paragraph 1 of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer damage in the territory of the other Party of the Contracting Party as a result of:

(a) The seizure of property belonging to them, by the authorities of the other Contracting Party, or

(b) The destruction of their property by the authorities of the other Contracting Party which is not the consequence of an armed conflict and was not necessary as a result of the situation arising,

Shall be provided without delay a fair and adequate compensation for damages resulting from the seizure or destruction of their property.

## **Article 5. Expropriation**

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to other measures after the fact the same nationalization or expropriation (hereinafter referred to as expropriation) in the territory of the other Contracting Party, except when the law or under the law of the other Contracting Party established public interest. The expropriation shall be carried out with the application of the law on non-discriminatory basis, with adequate compensation that will be made without delay.

Such compensation shall correspond to the market value of the expropriated investment as it was immediately before the expropriation or before the expropriation became publicly known fact, depending on what happened before, and will include appropriate interest calculated from the date of expropriation until the date of payment made.

2. The injured investor shall have the right, in accordance with the laws and regulations of the Expropriating Party of the Contracting Party, to urgently resolve his case by a judicial or other independent authority of that Contracting Party, and to valuation of the investment in accordance with the principles set forth in this Agreement..

## **Article 6. Transfers**

1. Each Contracting Party shall guarantee investors of the other Contracting Party, after payment of all fiscal and other obligations of investors of the other Contracting Party, the free transfer of financial amounts relating to their investments and in particular, though not exclusively:

- (a) the invested capital and additional funds to maintain or increase the investment funds;
- (b) revenues by an investment;
- (c) funds obtained from the repayment of loans granted to the companies with maturities of five years;
- (d) revenue from the total or partial sale or liquidation of investments;
- (e) the amount of compensation paid on the basis of Art. 4 and 5 of this Agreement;
- (f) Payment on the basis of judicial or arbitral awards arising from the settlement of disputes in accordance with Article 9 of this Agreement;
- (g) unspent salaries to employees, nationals of one Contracting Party realized in connection with an investment in the territory of the other Contracting Party.

2. Transfers 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 between the investor and the Contracting Party. Transfer will be executed according to the official exchange rate applicable at the date of transfer in the territory of the Contracting Party where the investment is realized.

## **Article 7. Transfer of Rights (subrogation)**

1. If a Contracting Party or its authorized institution to pay compensation for damage to its own investors under a guarantee it has made an investment in the territory of the other Contracting Party, the other Contracting Party shall recognize:

- (a) The transfer to the first Party of the Contracting Party or to its authorized institution of all rights and claims of the indemnified investor, whether it comes by law or through a legal transaction, and
- (b) That the first Party or its authorized institution, on the basis of subrogation, is authorized to exercise such rights or realize such claims to the same extent as a reimbursed investor and that it is required to take on the obligations relating to the investment.

2. The rights and claims transferred by subrogation to the first Party to the Contracting Party may not be higher than the original rights and claims of the investor.

3. The subrogation into the rights and obligations of the insured investor shall also apply to the transfer of payments made in accordance with Article 6 of this Agreement.

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

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled, if possible, consultations and negotiations.

2. If a dispute between the Contracting Parties can not be resolved in this manner within six months from the date of commencement of the negotiations, it shall, at the request of either Contracting Party, be submitted to arbitration.

3. The arbitral tribunal referred to in paragraph 2 of this Article shall be established on ad hoc basis, in each case, as follows: within three months of receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. These two members shall, within two months choose a third member; a third-country national, who, with the consent of both Contracting Parties shall be appointed Chairman of the arbitral tribunal.

4. If within the periods specified in paragraph 3 of this Article shall not constitute an arbitral tribunal, each Contracting Party may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice was a citizen of either Contracting Party, or is otherwise unable to perform this function, the Vice President shall be sought from the International Court of Justice to make the necessary appointments. If the Vice President of the International Court of Justice is a citizen of either Contracting Party or if he is unable to perform this function, each Contracting Party may request that the next in seniority member of the International Court of Justice, which is not a national of either one or the other Contracting Party, make the necessary appointments.

5. The arbitral tribunal shall decide on the basis of the provisions of this Agreement, as well as the generally accepted principles and rules of international law. The arbitral tribunal shall take decisions by majority vote. These decisions are final and binding on both Contracting Parties.

6. Each Contracting Party shall bear the costs of participation of its arbitrator and of its representatives in the arbitration proceedings. The costs of Chairman and the remaining costs shall be borne equally by both Contracting Parties. The arbitral tribunal may, however, in its decision direct that a Contracting Party shall bear most of the costs, and this decision will be binding on both Contracting Parties. The arbitral tribunal determines its own proceedings.

## **Article 9. Settlement of Disputes with Investors of the Contracting Parties**

1. Disputes between an investor of one Contracting Party and the other Contracting Party in connection with the obligations of the other Contracting Party in respect of investments of investors of the first Contracting Party under this Agreement shall be settled as far as possible by negotiation.

2. If the disputes referred to in paragraph 1 of this Article cannot be resolved within six months of the written request for the solution, either party to the dispute may refer the dispute to resolve:

(a) the competent court of the Contracting Party in whose territory the investment is made; or

(b) an ad hoc arbitration tribunal established in accordance with the Arbitration Rules of the United Nations Commission on Commercial Law (UNCITRAL), whose seat will be in the respondent State, and the appointing authority within the meaning of Article 6 (2) of the Arbitration Rules will be the International Arbitration Tribunal of the International Chamber of Commerce, or

(c) the International Centre for Settlement of Investment Disputes in case both Contracting Parties are parties to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature in Washington on 18 March 1965, provided that the place of arbitration in terms of Article 63 of the Convention to be in Paris.

(d) International Court of Arbitration of the International Chamber of Commerce (ICC), having the place of arbitration in Geneva.

3. When the investor of one Contracting Party and the other Contracting Party or its agency or state-owned company concluded an investment agreement which foresaw a process for resolving disputes, for disputes arising from this contract shall apply solely the procedure stipulated in the contract on investment.

4. The investor of one Contracting Party loses the right to initiate and conduct the court or arbitration proceedings pursuant to paragraph 2 of this Article in case there was a transfer of rights (subrogation) pursuant to Article 7 of this Agreement.

5. The investor of the Contracting Party which claims to have been damaged on the basis of expropriation may refer the dispute to the resolution of the Arbitration Tribunal provided for in paragraph 2, points. (b) - (d) if previously addressed for the protection of the court or other competent authority of the other Contracting Party under Article 5, paragraph 2 of this Agreement, and that the court or other competent authority refused his request or part of a claim or did not bring decision on the application within 18 months from the date of initiation of proceedings.

6. The arbitration decision is made under paragraph 2 of this Article shall be final and binding on both parties to the dispute, and each Contracting Party shall ensure the enforcement on its territory.

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

If the laws of any Contracting Party, or the present or future international agreements between the Contracting Parties or other international agreement which was signed by the Contracting Parties, contain provisions that investments of investors of another Contracting Party, provides a treatment that is more favorable than the treatment provided to this Agreement such laws and agreements shall, to the extent that they are more favorable, take precedence over this agreement. The provisions of this Article shall be construed to require investors Contracting Parties to submit to any other mechanism for resolving disputes with the investor the other Contracting Party except as expressly provided for in Article 9 of this Agreement.

## **Article 11. Consultation**

The representatives of the Contracting Parties will hold consultations, when necessary, with respect to matters relating to the implementation of this Agreement. Consultations will be held on the proposal of one Contracting Party in the city and at a time which will be arranged through diplomatic channels.

## **Article 12. Implementation of the Agreement**

The provisions of this Agreement shall relate to investments made by investors of one Party to the territory of the other Contracting Party before and after the entry into force of this Agreement and shall apply from the date of its entry into force, except that it shall not apply to disputes or repercussions that were created before its entry into force.

## **Article 13. Duration and Termination of the Agreement**

1. The Parties shall notify each other in writing of the fulfillment by the law of the envisaged conditions that must be met in its territory for the entry into force of this Agreement. The Agreement shall enter into force on the date of receipt of the second of the two notifications.

2. This Agreement is concluded for a period of ten years and will automatically continue to apply in successive periods of five years unless either Contracting Party notifies in writing the other Contracting Party, at least twelve months before the expiry, of its intention to terminate the Agreement.

3. When it comes to investments realized before the expiry of this Agreement the provisions of this Agreement shall survive over the next ten years from the date of realization of the investment.

IN WITNESS WHEREOF the undersigned person, duly authorized by their respective Governments, signed this Agreement.

DONE at Podgorica, on October 29, 2009, in two original copies, in both Montenegrin and Serbian, both texts being equally authentic.

FOR THE REPUBLIC OF MONTENEGRO

Branko Vujović

Minister of Economy

FOR THE REPUBLIC OF SERBIA

Mladjan Dinkic

Minister of Economy and Regional Development

