

# AGREEMENT BETWEEN THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA AND THE GOVERNMENT OF THE REPUBLIC OF ALBANIA FOR THE PROMOTION AND MUTUAL PROTECTION OF INVESTMENTS

The Federal Government of the Federal Republic of Yugoslavia and the Council of Ministers of the Republic of Albania, hereinafter referred to as "the Parties",

*Desiring* to intensify economic cooperation to the mutual benefit of both countries;

*Intending* to create favorable conditions for investments made by investors of either Party in the territory of the other Party;

*Recognizing* that the promotion and protection of investments under this Agreement will stimulate investment initiatives in this field,

HAVE AGREED AS FOLLOWS:

## Article I. Definitions

For the purposes of the present Agreement:

1. The term "Investor" means:

a) physical persons who, according to the law of that Party, are considered to be its nationals, and making investments in the territory of the other Party.

b) legal entities, including companies, associations, partnerships, corporations, branches and any other organization incorporated or constituted or otherwise duly organized under the law and regulations of one Party having its seat in the territory of that Party.

2. The term "investment" means every kind of asset and in particular, although not exclusively, the following:

a) shares, stocks and debentures of a company and any other form of participation in a company;

b) claims to money or to any performance under contract having economic value associated with an investment;

c) movable and immovable property and any other property rights as mortgages, liens, usufructs, pledges and similar rights;

d) industrial and intellectual property rights, including patents, licenses, trademarks and trade names, as well as technical processes, know-how, and goodwill;

e) rights to undertake economic and commercial activities conferred by law or by virtue of a contract, including concessions to search for, cultivate, extract or exploit natural resources;

Any change in the form in which assets are invested or reinvested shall not affect their character as investment, provided that such change is made in accordance with the law and regulations of the host Party of the investment.

3. The term "returns" means the amounts yielded by an investment and includes in particular, although not exclusively, profits, dividends, interest, capital gains, royalties and other income.

4. The term "territory" means:

- In respect of the Federal Republic of Yugoslavia: The area encompassed by land boundaries as well as the sea, seabed and its subsoil beyond the territorial sea over which the Federal Republic of Yugoslavia exercises, in accordance with its national laws and regulations and international law, sovereign rights or jurisdiction.

- In respect of the Republic of Albania: The territory under the sovereignty of the Republic of Albania, including the territorial

waters, as well as the maritime area and the continental shelf over which the Republic of Albania exercises, in accordance with its national laws and regulations and international law, its sovereign and legal rights.

## **Article II. Promotion and Admission**

1. Each Party shall encourage and create favorable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.
2. When a Party shall have admitted an investment in its territory, it shall, in accordance with its laws and regulations, grant the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance.

## **Article III. Protection**

1. Investments made by investors of one Party in the territory of the other Party shall at all times be accorded fair treatment and equal and shall enjoy full legal protection and security. In no case, shall a Party accord to such investments treatment less favorable than that required by international law.
2. Neither Party shall in any way impair, by arbitrary or discriminatory measures, the operation, management, maintenance, use, enjoyment, sale, and if it is the case, the liquidation of such investments. Each Party shall observe any obligation it may have entered into with regard to investments of investors of the other Party.

## **Article IV. National Treatment and Most Favoured Nation Treatment**

1. Each Party shall in its territory accord to investments or returns of investors of the other Party treatment no less favorable than that which it accords to the investments or returns of its own investors or to investments or returns of investors of any third State, whichever is more favorable to the investor concerned.
2. This treatment shall not extend to the privileges which either Party may grant to investors of a third State by virtue of its membership in, or association with any existing or future free trade area, customs union, common market or similar international agreement to which either of the Parties is or may become a party.
3. Each Party shall, in accordance with its laws and regulations, grant to investments or returns of investors of the other Party no less favorable treatment than that granted to the investments or returns of its own investors.
4. The treatment granted under this Article shall not be considered so as to oblige one Party to extend to the investors of the other Party the benefit of any treatment, preference or privilege resulting from any international agreement relating wholly or mainly to taxation, including any agreement for the avoidance of double taxation, or any domestic legislation relating wholly or mainly to taxation.

## **Article V. Expropriation**

1. Investments or returns of investors of either Party in the territory of the other Party shall not be nationalized, expropriated or subjected to measures having equivalent effect to nationalization or expropriation (hereinafter referred to as "expropriation") except for public interest, pursuant to the law, on a non discriminatory basis and against the payment of prompt, adequate and effective compensation.
2. Such compensation shall amount to the market value of the expropriated investment immediately before the expropriation measure was taken or before the impending expropriation became public knowledge, whichever is earlier. Compensation shall include interest at commercial rate until the date of payment and shall be paid without delay, in a freely convertible currency, shall be effectively realizable and freely transferable.
3. The investor affected shall have the right, under the law and regulations of the Party making the expropriation, to prompt review of its case by a judicial authority or other competent and independent authority of that Party, to determine whether such expropriation and the valuation of its investment conform to the principles set out in this Article.

## **Article VI. Compensation for Losses**

1. Investors of one Party, whose investments in the territory of the other Party suffer losses owing to war or other armed conflict, state of national emergency, revolution, insurrection, civil disturbance, revolt, riot or any other similar event, shall be accorded by the latter Party, as regards restitution, indemnification, compensation or other settlement, treatment no less

favorable than that which the latter Party accords to its own investors or to investors of any third State whichever is more favorable to the investor concerned. Resulting payments shall be freely transferable.

2. Notwithstanding the provisions of paragraph 1), an investor of a Party which, in any of the situations referred to in that paragraph, suffers a loss in the territory of the other Party resulting from:

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

shall be accorded by latter Party restitution or compensation which in either case shall be prompt, adequate and effective. Resulting payments shall be made without delay in a freely convertible currency and be freely transferable.

## **Article VII. Transfers**

1. Each Party shall guarantee upon payment of all fiscal and other obligations of investors of the other Party according to the laws and regulations of the first Party, the free transfer of all payments relating to their investments. Such transfers shall include, in particular, though not exclusively:

- a) the initial capital and additional amounts needed for the maintenance or increase of an investment;
- b) investment returns,
- c) funds in repayment of loans related to an investment;
- d) compensations provided for under Articles V and VI;
- e) proceeds from the total or partial sale or liquidation of an investment;
- f) unspent earnings and other remuneration of personnel engaged abroad in connection with an investment;
- g) payments arising out of the settlement of a dispute, under Articles X and XI;

2. Transfers under the present Agreement shall be made without delay in a freely convertible currency at the market rate of exchange prevailing on the date of transfer.

3. The Parties shall grant to transfers referred to in the present Article treatment no less favorable than that accorded to the transfer of payments originating from investments made by investors of any third state.

## **Article VIII. More Favourable Terms**

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

## **Article IX. Subrogation**

1. If one Party or its designated Agency makes a payment under an indemnity, guarantee or contract of insurance against non-commercial risks given in respect of an investment made by any of its investors in the territory of the other Party, the latter Party shall recognize the assignment of any right or claim of such investor to the former Party or its designated Agency and the right of the former Party or its designated Agency to exercise by virtue of subrogation any such right and claim to the same extent as its predecessor in title.

2. This subrogation will make it possible the former Party or its designated Agency to be the direct beneficiary of any payment for indemnification or other compensation of which the investor could be entitled to.

3. Subrogation of the rights and obligations of the indemnified investor shall also apply to the transfer of payments effected in accordance with Article VII of this Agreement.

## **Article X. Settlement of Disputes between the Parties**

1. Any dispute between the Parties relative to the interpretation or application of this Agreement will be as far as possible settled through diplomatic channels.
2. If it is not possible to settle the dispute in this way within six months from the start of the negotiations, it will be submitted, at the request of either of the two Parties, to an arbitration tribunal.
3. The tribunal shall be set up in the following way: each Party shall appoint an arbitrator and these two arbitrators shall elect a national of a third country as the president. The arbitrators shall be appointed within three months and the president within five months from the date on which either of the two Parties informed the other Party of its intention to submit the dispute to arbitration tribunal.
4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make necessary appointments. If the President is a national of either 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 Party or if he is also prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Party shall be invited to make the necessary appointments.
5. The tribunal shall issue its decision on the basis of respecting the national law, the rules contained in this Agreement, as well as the universally accepted principles of international law.
6. The arbitration tribunal shall lay down its own procedure.
7. The tribunal shall reach its decision by a majority of votes and that decision shall be final and binding on both Parties.
8. Each Party shall bear the expenses of the arbitrator appointed by it and those connected with representing it in the arbitration proceedings. The other expenses, including those of the president, shall be borne in equal parts by the two Parties.

## **Article XI. Disputes between a Party and an Investor of the other Party**

1. Disputes that may arise between one of the Parties and an investor of the other Party with regard to an investment shall be notified in writing, including detailed information, by the investor to the host Party of the investment. As far as possible, the parties concerned shall endeavor to settle these differences amicably.
2. If these disputes cannot be settled amicably within six months from the date of the written notification mentioned in paragraph 1, the dispute shall be submitted, at the choice of the investor, to:
  - the competent court of the Party in whose territory the investment was made; or
  - an ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);
  - the International Center for Settlement of Investment Disputes (ICSID) set up, by the "Convention on Settlement of Investment Disputes between States and Nationals of other States", opened for signature at Washington on 18 March 1965, in case if both Parties have become parties to this Convention.
3. The arbitration shall be based on:
  - the provisions of this Agreement;
  - the rules and the universally accepted principles of international law; -the national law of the Party in whose territory the investment was made, including the rules relative to conflicts of law.
4. A Party shall not assert as a defense that indemnification or other compensation for all or a part of the alleged damages has been received or shall be received by the investor pursuant to a guarantee or insurance contract.
5. The arbitration decisions shall be final and binding for the Parties in the dispute. Each Party undertakes to execute the decisions in accordance with its national law.

## **Article XII. Entry Into Force, Extension and Termination**

1. This Agreement shall enter into force on the date of the receipt the last notification on which the Parties inform each other that their respective domestic legal procedures formalities have been completed. It shall be applicable from the date

of its entering into force and shall remain in force for an initial period of ten years and, by tacit renewal, for consecutive periods of two years.

2. Either Party may terminate this Agreement by prior notification in writing addressed to the other Party, six months before the date of its expiration.

3. With respect to investments made prior to the date of termination of this Agreement, the provisions of all Articles of this Agreement shall thereafter continue to be effective for a farther period of ten years from such date of termination.

IN WITNESS WHEREOF, the respective plenipotentiaries by their Governments have signed this Agreement.

DONE in \_\_\_\_\_ on 26 November 2002, in two originals copies, each in the Serbian, Albanian and English languages, all texts being equally authentic.

In case of divergence in interpretation of the provisions of this Agreement, the English text shall prevail.

FOR THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA

FOR THE COUNCIL OF MINISTERS OF THE REPUBLIC OF ALBANIA