

# **AGREEMENT BETWEEN THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA AND THE GOVERNMENT OF THE REPUBLIC OF ZIMBABWE ON THE MUTUAL ENCOURAGEMENT AND PROTECTION OF INVESTORS**

The Federal Government of the Federal Republic of Yugoslavia and the Government of the Republic of Zimbabwe (hereinafter referred to as "the Parties"),

Desiring to establish conditions for increasing economic cooperation among the Parties,

In order to create and maintain(s) the conditions for mutual protection of investors,

Convinced that the initiatives of encouragement and protection of investments, thereby contribute significantly to the developing economic relations between the Parties,

Have agreed as follow:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term investment(s) shall mean any type of funds that invested one Contracting Party (invests) in the territory of the other Contracting Party, in accordance with its laws, and includes in particular, though not applies solely:

i) Movable and immovable property and any other property rights in rem, such as mortgage, pledge or collateral;

ii) Shares, bonds and other types of securities and participation in companies;

iii) Cash or any other claims under a contract having an economic value;

iv) intellectual property rights, such as copyrights and other related rights and industrial property rights, such as patents, licenses, industrial designs, trade secrets and models, any commercial signs, as well as goodwill, technical processes and know-how;

v) Business concessions in accordance with the laws of the Contracting Party in the territory of which the investment is made, including concessions for exploration, extraction and use of natural resources.

Changing the form of the invested funds shall not change its character of investment

2. The term "returns" means any amounts that investment brings and includes in particular, though not applies solely: profit, capital gains, dividends, interests, royalties, fees for patents and licenses, as well as other similar fees.

3. The term "investor" shall mean:

i) The natural person having citizenship of one Party and invests in the territory of the other Contracting Party;

ii) A legal entity established under the laws of one Contracting Party, which has its seat in the territory of the Contracting Party that invests in the territory of the other Party.

4. The term "territory" shall mean surfaces in this patient land borders as well as the area of the seabed and its underground outside the territorial sea in which the Contracting Parties have sovereign rights or jurisdiction in accordance with its laws and international law.

5. The term "law" means any law and administrative rules and regulations which are officially or in other ways publicly

published.

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

1. Each Party shall encourage and create conditions for investors have favorable other Party to investors on its territory and such investors in accordance with its laws.

Each contracting party shall encourage/incite and create favorable conditions for other contracting party to exert investments on its territory and allow such investments in accordance with its law

2. Investments of the investors of any contracting party shall at any time enjoy equitable and rightful treatment, full protection and security in the territory of the other party

## **Article 3. National Treatment and Treatment of Most Favoured Nation**

1. Each Contracting Party shall provide in its territory to investments of other Contracting party no less favorable treatment compared to investments of its own investors or investors of third countries, whichever is more favorable.

2. Each Contracting Party shall in its territory to investors of other Contracting party in terms of management, maintenance, use, enjoyment or disposal of its investments or grant no less favorable treatment compared to investments of its own investors or investors of third countries, whichever is more favorable.

3. The regulations 1 and 2 of this article shall not be interpreted so as to oblige one Contracting Party to give to investors of other Party any advantage in the treatment, preferences or privileges which the first Party grants to:

i) Customs union, free trade area, monetary union or other similar international agreement establishing such unions or other forms of regional cooperation to what the state is party of, or which any Contracting Party is or may become a signatory, or

ii) Any previous international agreements or arrangements which are in whole or in part relating to the assessor.

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

1. The Parties which investors have investments in the territory of the other Contracting Party that suffer losses due to war or other armed conflicts, state of emergency, rebellion, insurrection or riots in the territory of the other Contracting Party, will not provide treatment that becomes less favourable in terms of return, compensation, fees or other ways of settlement of loss, from that other Contracting state gives investors have their own, or investors of third countries. Payments on that basis will be done without unnecessary delay to, and it shall be freely transferable.

2. Without prejudice to provisions of paragraph 1 of this Article, investors have Parties who, in any of the situations mentioned in that paragraph, suffer losses in the territory of the other Party, which are the result of:

i) Seizure of their property by the authorities of the other Contracting Party, or

ii) Destruction of their assets by the authorities of the other Contracting Party, which did not result in combat or were not necessary because of the situation, it shall be approved the return of funds, and give appropriate compensation. Payments on that basis will be done without unnecessary delay to, and it shall be freely transferable.

## **Article 5. Expropriation**

1. Investments of investors have either Contracting Party shall not become nationalized, expropriated or subjected to measures by effect equal to expropriation or nationalization (hereinafter referred to as "expropriation") in the territory of the other Party except in the public interest. Expropriation fails to make currency by applying the law, on a non-discriminatory basis, with adequate compensation which shall not be without undue delay to execute.

Such compensation shall match the market value of the expropriated investment immediately before the expropriation or before the upcoming expropriation became known about the fact of it, depending of what is happened before, it will include normally accrued interest up to the date of payment, it shall be delivered without undue delay to and freely transferable.

2. The damaged investor will have the right, in accordance with the laws of the Contracting Party which executes expropriation that sought to judicial or other independent authority of that Party, immediately executes the consideration of his case and the evaluation of his investment, in accordance with the principles defined in this Article.

## **Article 6. Transfers**

1. Each Contracting Party shall, upon payments of all fiscal and other obligations of investors of other Contracting Party, guarantee investors have other Party, in accordance with the legislation of the first Contracting Party, the free transfer payment related to relocating to investors, and in particular, though not applies solely:

- i) Capital and additional amounts for maintenance an increase of investment;
- ii) Interests;
- iii) Funds from the repayment of loans;
- iv) revenue from the sale or liquidation of investors;
- v) The amounts paid in terms of Articles 4 and 5 of this Agreement.

2. Transfers referred to in paragraph 1 of this Article will be done without undue delay to the freely convertible currency at the rate applicable is formally on the date of transfer in the territory of the Contracting Party where investors realized.

## **Article 7. Subrogation**

1. If the Party or the price appointed institution executes payments own investors have to warranty approved by the investors in the territory of the other Contracting Party, the other Party fails to acknowledge:

- i) Assignment of the law or comply with legal transaction of any right or claims of investors of First Party or its appointed institution, as well as
- ii) That the first Contracting Party or its appointed institution is authorized thereto by subrogation to exercise the rights or claims investors have realized the enterprise and obligations relating to investment.

2. The subrogated rights or claims shall not exceed the original rights or claims of investors.

3. Subrogation rights and obligations of the insured investors also refers to the transfer of payment which is executed/done/performed in accordance with Article 6 of this agreement.

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

1. Disputes of the Contracting Parties concerning the interpretation or application of this Agreement shall be settled in the greatest possible extent, the negotiations between the Contracting Parties.

2. If a dispute between the Contracting Parties cannot be settled in this way within six months since commencement of the negotiations, it will at the request of either Contracting Party, be submitted to arbitration court.

3. The arbitral tribunal referred to in paragraph 2 of this article shall not be constituted on an ad hoc basis, for each individual case, by following these steps: Within three months of receiving a request for arbitration each Contracting Party will appoint one member of the court.

These two members shall within two months choose a third member of the court - a national of a Third country who shall, with the consent of both Parties, be appointed Chairman of the tribunal.

4. If within the determined time in paragraph 3 of this article the arbitration court is not constituted, any Party may, in the absence of agreement of any other kind, request the President of the International Court of Justice to make the necessary appointment.

If the president is a national of either one or the other Party, or if he is prevented in another way to perform this function, it will ask the Vice President to make the necessary appointment. If the vice president is a national of either one or the other Party, or if he also is prevented from performing this function, the next most senior members of the international Court of Justice, who is not a national of either one or the other Party, will be asked to make the necessary appointment.

5. The arbitration court will make decisions on the basis of the regulation of this Agreement, as well as the accepted international principles and rules of law. Arbitral tribunal makes decisions based on majority of votes.

These decisions are definitive and binding on both Contracting Parties.

The court will establish its own work procedure.

6. Each Contracting Party shall bear the costs of its court member and its participation in the arbitration procedure. Both Contracting parties shall bear the costs and other expenses of the President uniformly.

## **Article 9. Settlement of Disputes between One Contracting Party and Investors of the other Contracting Party**

1. Disputes between investors of one Contracting Party and the other Contracting Party in connection with the obligations of the other Contracting Party under this Agreement, in conjunction with the investments of the investor of the First Contracting Party, shall be resolved to the greatest possible extent through negotiations.

2. If the disputes referred to in paragraph 1 of this Article may not warrant timely negotiations within six months, both sides to the dispute will have the right to apply for a Settlement of a competent court of the Contracting Party that is a party to the dispute.

3. If the party to the dispute is not pleased with the decision of the competent court of the Contracting Party that is the party to the dispute within the meaning of paragraph 2 of this Agreement, this party shall submit the dispute to the arbitration Settlement of:

i) Ad hoc arbitration court according to the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL), or

ii) To the International Centre for Settlement of Investment Disputes, in the event that both Parties to the Convention on the Settlement of Investment Disputes between states and citizens of other states; open for signature in Washington March 18th 1965 (ICSID Convention).

4. The award shall be definitive and binding on both parties to the dispute, and it shall be conducted in accordance with the laws of the Contracting Party in whose territory an investor realized.

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

If the laws of the Contracting Parties, respectively present or future international agreements between the Parties or other International agreements of which are signatories to the Contracting Parties, include regulations that investments of investors of the other Party, giving a more favourable treatment to this treatment that is providing this Agreement, such legislation and agreements shall, to the measure which is more favourable, prevail over this agreement.

## **Article 11. Consultation**

Representatives of the Contracting Party shall hold consultations, when necessary, in relation to matters pertaining to the implementation of this Agreement. Consultations are going to be held on proposal of one Contracting Party in the city and at a time that are arranged through diplomatic channels.

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

Regulations of this Agreement relating to investments who investors of one Contracting Party realized before or after the entry into force of this Agreement, with what shall apply from the moment of its entry into force, provided that such investments conducted in accordance with the laws of that Party Contracting.

## **Article 13. Entry Into Force, Duration and Termination of Validity of the Agreement**

1. This Agreement is subject to ratification and will enter into force on the date of exchange of instruments of ratification.

2. This Agreement shall be concluded for a period of ten years and it will automatically continue to hold 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 scheduled completion this Agreement, the regulations of Articles. 1 to 12 will remain in force over the next 10 years from that date.

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

Made in Harare on 19 October 1996 in two originals, in Serbian and English languages, all texts therefore both the authentic. In case of differences in the interpretation, the English language shall prevail.

For the Federal Government of the Federal Republic of Yugoslavia,

Dr. Zoran Bingulac, s. r.

Federal Minister

For the Government of the Republic of Zimbabwe,

Dr. Herbert Murerwa, s. r

Finance Minister