

AGREEMENT BETWEEN THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA AND THE GOVERNMENT OF THE REPUBLIC OF POLAND ON RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

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

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

Intending to create and maintain favourable conditions for mutual investments,

Convinced that the promotion and protection of investments will contribute to strengthening of entrepreneurial initiatives and thus considerably contribute to 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 any kind of assets invested by investor of one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations and in particular, though not exclusively, shall include:

a) movable and immovable property and any other in rem rights such as mortgages, liens, or pledges;

b) shares, participations, bonds and other form of securities and participations in companies;

c) claims to money or to any performance under contract having economic value;

d) intellectual property rights such as copyrights and other related rights and industrial property rights such as patents, licences, industrial designs and models, trade marks, as well as goodwill, technical processes and know-how;

e) concessions granted in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made, including concessions to search for, extract and exploit natural resources.

Any alteration of 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 shall include in particular, though not exclusively: profit, capital gains, dividends, interests, royalties, fees for patents and licences, as well as other similar fees.

3. The term "investor" shall mean:

a) a natural person having the nationality of one Contracting Party and investing in the territory of the other Contracting Party;

b) a legal entity incorporated, constituted or otherwise duly organised according to the laws and regulations of one Contracting Party having its seat in the territory of that same Contracting Party and investing in the territory of the other Contracting Party.

4. The term "territory" shall mean the areas encompassed by land boundaries as well as the sea, seabed and its subsoil beyond the territorial sea, over which the Contracting Party has sovereign rights or jurisdiction in accordance with its laws and regulations and international law.

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 invest capital in its territory and shall admit such investments in accordance with its laws and regulations.

2. Investments of investors of each Contracting Party shall at any time enjoy fair and equitable treatment, full legal protection and security in the territory of the other Contracting Party.

Article 3

National Treatment and Most Favoured Nation Treatment

1. Each Contracting Party shall accord, in its territory, to investments of the other Contracting Party treatment no less favourable than that which it accords to the investments made by its own investors or by investors of any third State, whichever is more favourable.

2. Each Contracting Party shall accord, in its territory, to 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 that the first Contracting Party may grant to investors of any third State resulting from its membership in:

a) customs union, free trade area, monetary union or similar international agreement establishing such unions or other forms of regional cooperation to which either Contracting Party

is or may become a party, or resulting from

b) any existing or future international agreement or arrangement relating wholly or mainly 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 to other armed conflict, a state of emergency, revolt, insurrection or riot in the territory of the other Contracting Party, shall be accorded by the other Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the other 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 provisions of 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:

a) requisitioning of their property by authorities of the other Contracting Party; or

b) destruction of their property by 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 restitution or adequate compensation. Resulting payments shall be made without undue delay and shall be freely transferable.

Article 5

Expropriation

1. Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation"), except for a public interest. The expropriation shall be made with due process of law, on a non-discriminatory basis and against adequate compensation made without undue delay. Such compensation shall amount 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 basis of LIBOR until the date of payment, shall be made without undue delay and be freely transferable.

2. The investor affected shall, under the laws and regulations of the Contracting Party making the expropriation, have the right to prompt review of its case and valuation of its investment by a judicial or other independent authority of that Contracting Party, in accordance with the principles set out in this Article.

Article 6

Transfers

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

- a) capital and additional amounts to maintain or increase investments;
- b) returns;
- c) funds from repayment of loans;
- d) proceeds from the sale or liquidation of the investment;
- e) amounts paid under Articles 4, 5 and 7 of this Agreement;

2. Transfers under paragraph 1 of this Article shall be made without undue delay, in a freely convertible currency, at the official rate of exchange applicable on the date of transfer in the territory of the Contracting Party where the investment is made.

Article 7

Subrogation

1. If a Contracting Party or its designated institution makes a payment to its own investors under a guarantee approved for investment in the territory of the other Contracting Party, the other Contracting Party shall recognise.

a) the assignment under law or in accordance with the legal transaction of any right or claim of the investor of the first Contracting Party or its designated institution, and

b) that the first Contracting Party or its designated institution is entitled to exercise rights or enforce such claims of investors by virtue of subrogation, and assume the obligations related to the investment.

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

3. Subrogation of rights and obligations of the insured investor shall also apply to transfer of payment 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, to the fullest extent possible, be settled by negotiations between the Contracting Parties.

2. If a dispute between the Contracting Parties cannot be settled in this way within six months from the date of starting the negotiations, it shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal.

3. The arbitral tribunal referred to in paragraph 2 of this Article shall be constituted on an ad hoc basis, for each case, in the following way: within three months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Within two months, these two members shall select the third member of the tribunal, a national of a third State, who, with the approval of the two Contracting Parties, shall be appointed as Chairman of the tribunal.

4. If within the periods specified in paragraph 3 of this Article the arbitral tribunal has not been constituted, 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 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 arbitral tribunal shall reach decisions 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 reach decisions by a majority of votes. These decisions shall be final and binding on both Contracting Parties. The tribunal shall lay down its own work procedure.

6. Each Contracting Party shall bear the costs of its own member of the tribunal and his participation in the arbitration proceedings. The costs of the Chairman and the other costs shall be borne in equal parts by the Contracting Parties.

Article 9

Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Disputes between an investor of one Contracting Party and the other Contracting Party concerning the obligations of the Contracting Party, under this Agreement, and in relation to investments of investor of the first Contracting Party, shall, to the fullest extent possible, be settled by negotiations.

2. If the disputes referred to in paragraph 1 of this Article cannot be settled by negotiations within six months, either party to the dispute shall have the right to submit a request for settlement to a competent court of the Contracting Party which is a party to the dispute:

3. Instead of applying the provisions of paragraph 2 of this Agreement, either party to the dispute may refer the dispute to arbitration settlement to:

a) an ad hoc tribunal of arbitration pursuant to the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), or

b) the International Centre for the Settlement of Investment Disputes, in case both Contracting Parties are parties of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18th March 1965 (ICSID Convention).

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

Article 10

Application of other Provisions

If the laws of the Contracting Parties, or existing or future international agreements between the Contracting Parties, or other international agreements to which the Contracting Parties are parties, contain provisions entitling investments of investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such laws and agreements shall, to the extent that they are more favourable, prevail over this Agreement.

Article 11

Consultations

Representatives of the Contracting Parties shall hold consultations, when necessary, in relation to the issues referring to application of this Agreement. Consultations shall be held at the proposal of one Contracting Party in place and time that shall be agreed through the diplomatic channel.

Article 12

Application of the Agreement

The provisions of this Agreement shall relate to investments made by investors of one Contracting Party prior to and after entry into force of this Agreement, but shall apply from the moment of its entry into force.

Article 13

Entry into Force, Duration and Termination of the Agreement

1. This Agreement shall be subject to ratification and shall enter into force on the date of receipt of the last information by which one Contracting Party shall notify the other Contracting Party of the completion of the internal legal procedure required for the entry into force of this Agreement.

2. This Agreement shall be concluded for a period of ten years and shall automatically continue in force for successive periods of five years, unless notice of termination is given in writing by one Contracting Party to the other Contracting Party of its intention to terminate the Agreement at least twelve months prior to expiration.

3. In respect of investments made prior to the date of termination of this Agreement, the

provisions of Articles 1 to 12 shall remain in force for a period of the following 10 years from that date.

In witness whereof, the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Belgrade, on 3rd September 1996, in Serbian, Polish and English language, all texts being equally authentic. In the event of any divergence in interpretation, the English language shall prevail.

For the Federal Government
of the Federal Republic of Yugoslavia
Milan Milutinovic, m. p.

For the Government of the Republic
of Poland,
Dariusz Rosati, m. p.