

The Agreement was previously
published as Serbia No. 1 (2007)
Cm 7048



Treaty Series No.9 (2007)

Agreement

between the Government of the United Kingdom of Great Britain and
Northern Ireland and the Government of the Federal Republic of
Yugoslavia for the Reciprocal Promotion and Protection of Investments,
with Exchange of Notes

Belgrade, 6 November 2002

[The Agreement entered into force on 3 April 2007]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
May 2007*

Cm 7129

£5.00

**AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED
KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE
GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA FOR
THE RECIPROCAL PROMOTION AND PROTECTION OF
INVESTMENTS WITH EXCHANGE OF NOTES**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federal Republic of Yugoslavia (hereafter the "Contracting Parties");

Desiring to create favourable conditions for greater investment by nationals and companies of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the encouragement and reciprocal protection of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both States;

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement:

- (a) "investment" means every kind of assets and in particular, though not exclusively, includes:
 - (i) movable and immovable property and any other real property rights, such as mortgages, liens or pledges;
 - (ii) shares in and stocks and debentures and other kinds of securities of a company and any other form of participation in a company;
 - (iii) claims to money or to any performance under contract 1;
 - (iv) intellectual property rights (such as copyrights and related rights, patents, industrial designs or models, trade marks), goodwill, technical processes and know-how;
 - (v) concessions conferred by law or regulations or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

A change in the form in which assets are invested does not affect their character as investments.

- (b) "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees.
- (c) "investor" means nationals or companies.
- (d) "nationals" means:
 - (i) in respect of the United Kingdom: natural persons deriving their status as United Kingdom nationals from the law in force in the United Kingdom;
 - (ii) in respect of the Federal Republic of Yugoslavia: a natural person having the nationality of the Federal Republic of Yugoslavia;
- (e) "companies" means:
 - (i) in respect of the United Kingdom: corporations, firms and associations incorporated or constituted under the law in force in any part of the United Kingdom or in any territory to which this Agreement is extended in accordance with the provisions of Article 13;
 - (ii) in respect of the Federal Republic of Yugoslavia: a legal entity incorporated, constituted or otherwise duly organized in accordance with the laws and regulations of the Federal Republic of Yugoslavia.
- (f) "territory" means:
 - (i) in respect of the United Kingdom: Great Britain and Northern Ireland, including the territorial sea and any maritime area situated beyond the territorial sea of the United Kingdom which has been or might in the future be designated under the national law of the United Kingdom in accordance with international law as an area within which the United Kingdom may exercise rights with regard to the sea-bed and subsoil and the natural resources and any territory to which this Agreement is extended in accordance with the provisions of Article 13;
 - (ii) 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.

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, subject to its right to exercise powers conferred by its laws, shall admit such capital.
- (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 with regard to investments of investors of the other Contracting Party.

ARTICLE 3

National Treatment and Most-favoured-nation Provisions

- (1) Neither Contracting Party shall in its territory subject investments or returns of investors of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State.
- (2) Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own investors or to investors of any third State.
- (3) For the avoidance of doubt it is confirmed that the treatment provided for in paragraphs (1) and (2) above shall apply to the provisions of Articles 1 to 12 of this Agreement.

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, revolution, 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 freely transferable and shall be made without delay.

(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:

- (a) requisitioning of their property by its military or civil authorities, or
- (b) destruction of their property by the military or civil authorities, 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 freely transferable and shall be made without delay.

ARTICLE 5

Expropriation

(1) Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose related to the internal needs of that Party on a non-discriminatory basis and against prompt, adequate and effective compensation. 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 at a normal commercial rate until the date of payment, shall be made without delay, and be freely transferable. The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

(2) 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 other Contracting Party who are owners of those shares.

ARTICLE 6

Repatriation of Investment and Returns

Each Contracting Party shall guarantee to the investors of the other Contracting Party, free transfer of payments related to their investments including in particular, though not exclusively:

- a) capital and additional amounts to maintain or increase investments;
- b) unspent earnings of investors' employees working in connection with the investment in the territory of the Contracting Party;
- c) returns;
- d) repayment of loans;
- e) proceeds from total or partial liquidation or sale of the investment,
- f) compensation according to Articles 4 and 5 of this Agreement,
- g) payments arising out of a settlement of a dispute, according to Article 8 of this Agreement.

An investor may not rely on this Article to avoid payment of his fiscal or other financial obligations owned in the territory of the first mentioned Contracting Party.

Transfers shall be effected without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the investor and the Contracting Party concerned. Transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force in the territory of the Contracting Party where the investment was made.

ARTICLE 7

Exceptions

The provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the investors of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from:

- (a) any existing or future customs union or similar international agreement to which either of the Contracting Parties is or may become a party; or
- (b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

ARTICLE 8

Settlement of Disputes between an Investor and a 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 which have not been amicably settled shall, after a period of three months from written notification of a claim, be submitted for settlement to a competent court by the Contracting Party or to international arbitration if the investor concerned so wishes.

(2) 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:

- (a) the International Centre for the Settlement of Investment Disputes having regard to the provisions, where applicable, of the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington DC on 18 March 1965¹ and the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings; or
- (b) the Court of Arbitration of the International Chamber Commerce; or
- (c) an international arbitrator or ad hoc arbitration tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law.

If after a period of three months from written notification of the claim no agreement is reached on one of the above alternative procedures, the dispute shall at the request in writing of the investor concerned be submitted to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law as then in force. The parties to the dispute may agree in writing to modify these Rules.

¹ Treaty Series No. 25 (1967) Cmnd 3255

ARTICLE 9

Disputes between the Contracting Parties

- (1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through the diplomatic channel.
- (2) If a dispute between the Contracting Parties cannot thus be settled it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.
- (3) Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.
- (4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any 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.
- (6) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs 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 10

Subrogation

(1) If one Contracting Party or its designated Agency ("the first Contracting Party") makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party ("the second Contracting Party"), the second Contracting Party shall recognize:

- (a) the assignment to the first Contracting Party by law or by legal transaction of all the rights and claims of the party indemnified; and
- (b) that the first Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified.

(2) The first Contracting Party shall be entitled in all circumstances to the same treatment in respect of:

- (a) the rights and claims acquired by it by virtue of the assignment, and
- (b) any payments received in pursuance of those rights and claims,

as the party indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

(3) Any payments received in non-convertible currency by the first Contracting Party in pursuance of the rights and claims acquired shall be freely available to the first Contracting Party for the purpose of meeting any expenditure incurred in the territory of the second Contracting Party.

ARTICLE 11

Application of other Rules

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

ARTICLE 12

Application of the Agreement

The provisions 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

Territorial Extension

At the time of entry into force of this Agreement, or at any time thereafter, the provisions of this Agreement may be extended to such territories for whose international relations the Government of the United Kingdom are responsible as may be agreed between the Contracting Parties in an Exchange of Notes.

ARTICLE 14

Entry into Force

Each Contracting Party shall notify the other in writing of the completion of the legal formalities required in its territory for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of the two notifications.

ARTICLE 15

Duration and Termination

This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other. In respect of investments made whilst the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of twenty years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

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

Done in duplicate at Belgrade this 6th day of November 2002 in the English and Serbian languages, both texts being equally authoritative.

For the Government of the United Kingdom
of Great Britain and Northern Ireland:

For the Federal Government
of the Federal Republic of
Yugoslavia:

JACK STRAW

GORAN SVILANOVIC

**EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
AND THE GOVERNMENT OF THE REPUBLIC OF SERBIA**

No. 1

*The Western Balkans Group of the Foreign and Commonwealth Office to the
Embassy of the Republic of Serbia in London*

*Foreign and Commonwealth Office
London*

18 December 2006

The Western Balkans Group of the Foreign and Commonwealth Office presents its compliments to the Embassy of the Republic of Serbia and has the honour to refer to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Federal Government of Yugoslavia for the Reciprocal Protection of Investments signed on 6 November 2002 (henceforth referred to as 'the Agreement').

The Western Balkans Group further has honour to recall the Embassy's Note No. 115/2006 of 27 March 2006 recalling that Serbia and Montenegro notified the British Embassy in Belgrade by Note on 31 May 2004 of the completion of its legal formalities for the purposes of Article 14 of the Agreement.

The Western Balkans Group also has the honour to recall that, as confirmed in the Embassy's Note No. 222/2006 of 6 June 2006, following the independence of Montenegro, the Republic of Serbia continues the international legal personality of the former State Union of Serbia and Montenegro.

The Western Balkans Group accordingly has the honour to propose that references in the title and text of the Agreement to "The ...Government of the FRY" and "the FRY" be considered as references to "The ...Government of the Republic of Serbia" and "the Republic of Serbia".

If this proposal is acceptable to the Embassy, Western Balkans Group has the honour to propose that this Note, and your reply to that effect, shall constitute an exchange of Notes amending the Agreement.

The Western Balkans Group avails itself of this opportunity to renew to the Embassy the assurances of its highest consideration.

Note Verbale No. EKR 03/2006

Foreign and Commonwealth Office,
Western Balkan Group

No. 2

The Embassy of the Republic of Serbia to the Western Balkans Group at the Foreign and Commonwealth Office, London

*Embassy of the Republic of Serbia
London*

29 December 2006

The Embassy of the Republic of Serbia in London presents its compliments to the Foreign and Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland, Western Balkan Group, and has the honour to acknowledge receipt of Note Verbale No. EKR 03/2006 relating to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Federal Government of Yugoslavia for the Reciprocal Protection of Investments signed on 6 November 2002.

The Republic of Serbia accepts that references in the title and text of the Agreement to "The ...Government of the FRY" and "the FRY" be considered as references to "The...Government of the Republic of Serbia" and "the Republic of Serbia".

Therefore, Note Verbale No. EKR 03/2006 of the Foreign and Commonwealth Office and this Note are to be considered as an amendment to the Agreement constituted by the exchange of Notes.

The Embassy of the Republic of Serbia in London avails itself of this opportunity to renew to the Foreign and Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland, Western Balkans Group, the assurances of its highest consideration.

No. 600/2006

The Embassy of the Republic of Serbia
London