

10. Zakon o ratifikaciji Sporazuma med Vlado Republike Slovenije in Vlado Kraljevine Švedske o spodbujanju in medsebojni zaščiti naložb s protokolom (BSESZN)

Na podlagi druge alineje prvega odstavka 107. člena in prvega odstavka 91. člena Ustave Republike Slovenije izdajam

U K A Z**O RAZGLASITVI ZAKONA O RATIFIKACIJI SPORAZUMA MED VLADO REPUBLIKE SLOVENIJE IN VLADO KRALJEVINE ŠVEDSKE O SPODBUJANJU IN MEDSEBOJNI ZAŠČITI NALOŽB S PROTOKOLOM (BSESZN)**

Razglašam Zakon o ratifikaciji Sporazuma med Vlado Republike Slovenije in Vlado Kraljevine Švedske o spodbujanju in medsebojni zaščiti naložb s protokolom (BSESZN), ki ga je sprejel Državni zbor Republike Slovenije na seji 31. januarja 2001.

Št. 001-22-14/01
Ljubljana, dne 9. februarja 2001

Predsednik
Republike Slovenije
Milan Kučan l. r.

Z A K O N**O RATIFIKACIJI SPORAZUMA MED VLADO REPUBLIKE SLOVENIJE IN VLADO KRALJEVINE ŠVEDSKE O SPODBUJANJU IN MEDSEBOJNI ZAŠČITI NALOŽB S PROTOKOLOM (BSESZN)**

1. člen

Ratificira se Sporazum med Vlado Republike Slovenije in Vlado Kraljevine Švedske o spodbujanju in medsebojni zaščiti naložb s protokolom, podpisan v Stockholmu 5. oktobra 1999.

2. člen

Sporazum s protokolom se v izvorniku v slovenskem in angleškem jeziku glasi:*

**S P O R A Z U M
MED VLADO REPUBLIKE SLOVENIJE IN VLADO
KRALJEVINE ŠVEDSKE O SPODBUJANJU
IN MEDSEBOJNI ZAŠČITI NALOŽB****A G R E E M E N T
BETWEEN THE GOVERNMENT OF THE
REPUBLIC OF SLOVENIA AND THE
GOVERNMENT OF THE KINGDOM OF SWEDEN
ON THE PROMOTION AND MUTUAL
PROTECTION OF INVESTMENTS**

Vlada Republike Slovenije in Vlada Kraljevine Švedske, v nadaljevanju "pogodbenici", sta se

The Government of the Republic of Slovenia and the Government of the Kingdom of Sweden, hereinafter referred to as the "Contracting Parties",

v želji, da okrepiata gospodarsko sodelovanje v obojestransko korist obeh držav ter da ohranita poštene in pravične pogoje za naložbe vlagateljev ene pogodbenice na ozemlju druge pogodbenice,

Desiring to intensify economic cooperation to the mutual benefit of both countries and to maintain fair and equitable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

ob spoznanju, da bosta spodbujanje in medsebojna zaščita naložb na podlagi tega sporazuma spodbudila poslovne pobude,

Recognizing that the promotion and mutual protection of investments on the basis of this Agreement will stimulate business initiatives,

sporazumeli, kot sledi:

Have agreed as follows:

1. člen

Opredelitev pojmov

Za namen tega sporazuma:

Article 1

Definitions

For the purpose of this Agreement:

1. Izraz "naložba" pomeni vsako vrsto premoženja, ki ga vlagatelj ene pogodbenice vlagajo na ozemlju druge

1. The term "investment" shall mean every kind of asset invested by investors of one Contracting Party in the

* Besedilo sporazuma s protokolom v švedskem jeziku je na vpogled v sektorju za mednarodne pravne zadeve Ministrstva za zunanje zadeve Republike Slovenije.

pogodbenice v skladu z zakoni in predpisi te pogodbenice in vključuje zlasti, vendar ne izključno:

- a) premožnine in nepremičnine ter druge stvarne pravice, kot so hipoteke, zasegi, zastave in podobne pravice;
- b) deleže, delnice, obveznice in kakršno koli drugo obliko udeležbe v družbah;
- c) denarne terjatve ali zahtevke v zvezi s kakršno koli drugo dejavnostjo, ki ima ekonomsko vrednost;
- d) pravice intelektualne lastnine, tehnološke postopke, blagovne znamke, know-how, vrednost na podlagi dobrega imena in slovesa in druge podobne pravice in
- e) koncesije, vključno s koncesijami za iskanje, raziskovanje, črpanje ali izkoriščanje naravnih virov, ki jih z zakonom, upravnim aktom ali pogodbo podeljuje pristojni organ.

Blagu, ki ga najemodajalec kot vlagatelj ene pogodbenice daje na razpolago najemniku po najemni pogodbi na ozemlju druge pogodbenice, se zagotavlja obravnava, ki ni manj ugodna od tiste, ki se zagotavlja naložbi.

Kakršna koli sprememba oblike, v kateri se premoženje investira ali reinvestira, ne vpliva na njegovo naravo kot naložbo pod pogojem, da je taka sprememba v skladu z zakoni in predpisi pogodbenice, na katere ozemlju je bila naložba izvedena.

2. Izraz "dohodek" pomeni zneske, ki jih prinašajo naložbe, in vključuje zlasti, vendar ne izključno dobičke, dividende, obresti, licenčnine, kapitalske dobičke ali druge oblike dohodka, ki jih prinašajo naložbe, vključno s pristojbinami za tehnično pomoč.
3. Izraz "vlagatelj" pomeni:
 - a) fizične osebe, ki so državljani ene ali druge pogodbenice v skladu z njenimi zakoni;
 - b) pravne osebe, ustanovljene po pravu te pogodbenice, in
 - c) pravne osebe, ki niso ustanovljene po pravu te pogodbenice, temveč jih neposredno ali posredno nadzorujejo fizične osebe, kot je opredeljeno v točki a), ali pravne osebe, kot je opredeljeno v točki b) zgoraj.
4. Izraz "ozemlje" pomeni ozemlje vsake pogodbenice kot tudi izključno ekonomsko cono, morsko dno in njegovo podzemlje, nad katerim ta pogodbenica uresničuje suverene pravice ali jurisdikcijo v skladu z mednarodnim pravom.

2. člen

Spodbujanje in zaščita naložb

1. Vsaka pogodbenica na svojem ozemlju, kolikor je le mogoče, pospešuje in spodbuja naložbe vlagateljev druge pogodbenice in dovoljuje take naložbe na svojem ozemlju v skladu s svojimi zakoni in predpisi.
2. Vsaka pogodbenica priznava na svojem ozemlju naložbam vlagateljev druge pogodbenice pošteno in pravično obravnavo ter popolno in trajno zaščito in varnost. V nobenem primeru pogodbenica ne sme obravnavati teh naložb manj ugodno, kot to zahteva mednarodno pravo.

territory of the other Contracting Party in accordance with the laws and regulations of the latter including, in particular, though not exclusively:

- a) movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges and similar rights;
- b) shares, stocks, debentures and any other form of interest in a company;
- c) claims to money or to any performance having an economic value;
- d) intellectual property rights, technical processes, trade names, know-how, goodwill and other similar rights; and
- e) concessions conferred by law, by administrative act or under a contract, by a competent authority, including concessions to search for, develop, extract or exploit natural resources.

Goods, that under a leasing agreement are placed at the disposal of a lessee in the territory of one Contracting Party by a lessor being an investor of the other Contracting Party, shall be treated no less favourably than an investment.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investments, provided that such alteration is in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

2. The term "returns" shall mean the amounts yielded by investments and in particular, though not exclusively, shall include profits, dividends, interests, royalties, capital gains or other forms of income related to the investments including technical assistance fees.
3. The term "investor" shall mean:
 - a) natural persons having the nationality of either Contracting Party, in accordance with its laws,
 - b) legal persons constituted under the law of that Contracting Party, and
 - c) legal persons not constituted under the law of that Contracting Party but controlled, directly or indirectly, by natural persons as defined in a) or by legal persons as defined in b) above.
4. The term "territory" shall mean the territory of each Contracting Party as well as the exclusive economic zone, the seabed and subsoil, over which the Contracting Party exercises, in accordance with international law, sovereign rights or jurisdiction.

Article 2

Promotion and Protection of Investments

1. Each Contracting Party shall promote and encourage, as far as possible, within its territory investments made by investors of the other Contracting Party and shall admit such investments into its territory in accordance with its laws and regulations.
2. Each Contracting Party shall accord to investments in its territory of investors of another Contracting Party fair and equitable treatment and full and constant protection and security. In no case shall a Contracting Party accord treatment less favourable than that required by international law.

3. Nobena pogodbenica na svojem ozemlju ne sprejema neupravičenih, samovoljnih ali diskriminacijskih ukrepov, s katerimi bi kakor koli škodovala upravljanju, vzdrževanju, uporabi, uživanju naložb vlagateljev druge pogodbenice ali razpolaganju z njimi.
4. V skladu z zakoni in predpisi v zvezi z vstopom in bivanjem tujcev, se posameznikom, ki delajo za vlagatelja ene pogodbenice, kot tudi članom njihovega gospodinjstva dovoli vstop na ozemlje druge pogodbenice, bivanje in odhod s tega ozemlja zaradi izvajanja dejavnosti v zvezi z naložbami na ozemlju te druge pogodbenice.

3. člen

Nacionalna obravnava in obravnava po načelu države z največjimi ugodnostmi

1. Naložbe vlagateljev ene pogodbenice na ozemlju druge pogodbenice ali dohodki, povezani z njimi, so deležni obravnave, ki ni manj ugodna od tiste, ki jo pogodbenica priznava naložbam in dohodkom svojih vlagateljev ali vlagateljev katere koli tretje države, kar je ugodnejše.
2. Vlagateljem ene pogodbenice druga pogodbenica glede upravljanja, vzdrževanja, uporabe, uživanja naložb ali razpolaganja z njimi priznava obravnavo, ki ni manj ugodna od tiste, ki jo ta pogodbenica priznava svojim vlagateljem ali vlagateljem katere koli tretje države, kar je ugodnejše.
3. Določb tega člena ni mogoče razlagati tako, da obvezujejo eno pogodbenico, da podeli vlagateljem druge pogodbenice kakršne koli prednostne obravnave ugodnosti ali privilegije na podlagi:
 - a) kakršnega koli obstoječega ali prihodnjega prostotrgovinskega območja, carinske unije ali skupnega trga, katerih članica je ali lahko postane pogodbenica, in
 - b) kakršnega koli mednarodnega sporazuma ali notranje zakonodaje, ki se v celoti ali v glavnem nanaša na obdavčenje.

4. člen

Razlastitev

1. Naložbe vlagateljev ene ali druge pogodbenice se na ozemlju druge pogodbenice ne smejo razlastiti, nacionalizirati ali se v zvezi z njimi sprejeti drugi ukrepi, ki imajo enak učinek kot razlastitev ali nacionalizacija (v nadaljevanju "razlastitev"), razen če so v javnem interesu, na nediskriminacijski podlagi v skladu s pravilnim zakonskim postopkom in za takojšnjo, ustrezno in učinkovito nadomestilo.
2. Tako nadomestilo je v višini poštene tržne vrednosti razlašene naložbe tik pred razlastitvijo ali preden je namepravana razlastitev postala tako splošno znana, da je vplivala na vrednost naložbe (v nadaljevanju "datum vrednotenja").
3. Ta poštena tržna vrednost je na zahtevo vlagatelja izražena v prosto zamenljivi valuti na podlagi tržnega menjalnega tečaja, ki velja za to valuto na datum vrednotenja. Nadomestilo vključuje tudi obresti po komercialni obre-

3. Neither Contracting Party shall in any way impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

4. Subject to the laws and regulations relating to the entry and sojourn of aliens, individuals working for an investor of one Contracting Party, as well as members of their household, shall be permitted to enter into, remain on and leave the territory of the other Contracting Party for the purpose of carrying out activities associated with investments in the territory of the latter Contracting Party.

Article 3

National and Most Favoured Nation Treatment

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party, or returns related thereto, shall be accorded treatment which is not less favourable than the latter Contracting Party accords to the investments and returns made by its own investors or by investors of any third State, whichever is the more favourable.
2. Investors of one Contracting Party shall be accorded by the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment which is not less favourable than the latter Contracting Party accords its own investors or to investors of any third State, whichever is the more favourable.
3. The provisions 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 by virtue of:
 - a) any existing or future free trade area, customs union or common market to which either of the Contracting Parties is or may become a Party, and
 - b) any international agreement or any domestic legislation relating wholly or mainly to taxation.

Article 4

Expropriation

1. Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalised or subject to any other measure having effect equivalent to expropriation or nationalization (hereinafter referred to as "expropriation") except for a public purpose, on a non-discriminatory basis, under due process of law and against prompt, adequate and effective compensation.
2. Such compensation shall amount to the fair market value of the investment expropriated at the time immediately before the expropriation or impending expropriation became known in such a way as to affect the value of the investment (hereinafter referred to as the "valuation date").
3. Such fair market value shall at the request of the investor be expressed in a freely convertible currency on the basis of the market rate of exchange existing for that currency on the valuation date. Compensation shall also

stni meri, določeni na tržni podlagi od dneva razlastitve do dneva plačila.

4. Vlagatelj, katerega naložbe so razlašene, ima pravico zahtevati, da skladno z zakonodajo pogodbenice, ki razlastitev izvede, soden ali drug pristojen organ te pogodbenice takoj pregleda njegov primer in vrednotenje njegovih naložb v skladu z določbami tega člena.

5. člen

Nadomestilo za izgube

Vlagateljem ene pogodbenice, pri naložbah katerih so nastale izgube zaradi vojne ali drugega oboroženega spopada, revolucije, narodne vstaje, izrednega stanja ali podobnih dogodkov na ozemlju druge pogodbenice, ta druga pogodbenica priznava glede ukrepov, ki jih sprejme v zvezi s takimi izgubami, vključno z nadomestilom, odškodnino in vzpostavitvijo prejšnjega stanja, nič manj ugodno obravnavo kot svojim vlagateljem ali vlagateljem katere koli tretje države. Vsako plačilo, opravljeno na podlagi tega člena, je prosto prenosljivo.

6. člen

Prenosi

1. Vsaka pogodbenica jamči vlagateljem druge pogodbenice prost prenos sredstev v zvezi z njihovimi naložbami in še zlasti, vendar ne izključno:
- začetnega kapitala in dodatnih prispevkov za vzdrževanje ali razvoj naložb;
 - dohodkov;
 - sredstev za odplačilo posojil v zvezi z naložbo;
 - izkupiček od celotne ali delne prodaje ali likvidacije naložbe;
 - kakršne koli odškodnine ali drugega plačila iz 4. in 5. člena tega sporazuma;
 - zaslužkov in drugih prejemkov tujih državljanov, zaposlenih v zvezi z naložbo.
2. Prenosi se opravijo po tržnem menjalnem tečaju, veljavnem na dan prenosa, za gotovinske posle v valuti prenosa. Če ni trga za tujo valuto, se uporablja najnovejši menjalni tečaj, ki je bil uporabljen pri naložbah v državo, ali najnovejši menjalni tečaj za pretvorbo valut v posebne pravice črpanja, kar je za vlagatelja ugodnejše.

7. člen

Subrogacija

Če pogodbenica ali agencija, ki jo ta imenuje, opravi plačilo svojemu vlagatelju na podlagi jamstva, danega v zvezi z naložbo na ozemlju druge pogodbenice, potem ta druga pogodbenica, ne da bi posegala v pravice prve pogodbenice po 8. členu, prizna prenos vseh pravic in terjatev vlagatelja na prvo pogodbenico ali njeno agencijo, ki jih bo upravičena uresničevati na podlagi subrogacije v enakem obsegu kot oškodovana stranka.

include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment.

4. The investor whose investments are expropriated, shall have the right under the law of the expropriating Contracting Party to the prompt review by a judicial or other competent authority of that Contracting Party of its case and of the valuation of its investments in accordance with the principles set out in this Article.

Article 5

Compensation for Losses

Investors of one Contracting Party whose investments have suffered losses owing to war or other armed conflict, revolution, national uprising, state of emergency or any similar event in the territory of the other Contracting Party shall be accorded by the latter Contracting Party treatment, as regards measures it adopts in relation to such losses, including compensation, indemnification and restitution, no less favourable than that which the latter Contracting Party accords to its own investors or investors of any third State. Any payment made under this Article shall be freely transferable.

Article 6

Transfers

1. Each Contracting Party shall guarantee investors of the other Contracting Party the free transfer of funds related to their investments and in particular, though not exclusively:
- initial capital and additional contributions for the maintenance or development of the investments;
 - the returns;
 - funds in repayment of loans related to an investment;
 - proceeds from the sale or liquidation of all or part of an investment;
 - any compensation or other payment referred to in Articles 4 and 5 of this Agreement;
 - earnings and other remuneration of nationals engaged from abroad in connection with the investment.
2. Transfers shall be made at the market rate of exchange existing on the date of transfer with respect to spot transactions in the currency to be transferred. In the absence of a market for foreign exchange, the rate to be used will be the most recent rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is more favourable to the investor.

Article 7

Subrogation

If a Contracting Party or its designated agency makes a payment to its investor under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 8, recognize the assignment to the former Contracting Party or its designated agency of all rights and claims of the investor which that Contracting Party or its designated agency shall be entitled to exercise by virtue of subrogation to the same extent as the Party indemnified.

8. člen

Spori med pogodbenicama

1. Spori med pogodbenicama v zvezi z razlago in uporabo tega sporazuma se, kolikor je to le mogoče, rešujejo s pogajanjem po diplomatski poti.
2. Če takega spora ni mogoče rešiti v šestih (6) mesecih od dne, ko je ena ali druga pogodbenica zahtevala takšna pogajanja, se spor na zahtevo ene ali druge pogodbenice predloži arbitražnemu sodišču.
3. Arbitražno sodišče se ustanovi za vsak posamezen primer na naslednji način. V dveh (2) mesecih po prejemu zahteve za arbitražo imenuje vsaka pogodbenica enega člana razsodišča. Ta dva člana nato izbereta državljana tretje države, ki se po odobritvi pogodbenic imenuje za predsednika razsodišča. Predsednik se imenuje v treh (3) mesecih od dne, ko sta bila imenovana druga dva člana.
4. Če potrebna imenovanja niso bila opravljena v rokih, določenih v tretjem odstavku tega člena, lahko ena ali druga pogodbenica, če ni dogovorjeno drugače, povabi predsednika Meddržavnega sodišča, da opravi potrebna imenovanja. Če je predsednik državljan ene od pogodbenic ali če iz kakršnega koli razloga ne more opraviti te naloge, se povabi podpredsednik sodišča, da opravi potrebna imenovanja. Če je podpredsednik sodišča državljan ene od pogodbenic ali iz kakršnega koli razloga ne more opraviti te naloge, se povabi po funkciji naslednji najstarejši član Meddržavnega sodišča, ki ni državljan ene od pogodbenic, da opravi potrebna imenovanja.
5. Arbitražno sodišče odloča z večino glasov. Odločitve sodišča so za pogodbenici dokončne in zavezujoče. Vsaka pogodbenica krije stroške svojega člana in svojih predstavnikov v arbitražnem postopku. Pogodbenici krijeta stroške za predsednika in vse druge stroške v enakih delih. Razsodišče lahko sprejme drugačno odločitev o delitvi stroškov. Glede vseh drugih zadev razsodišče samo določi svoj poslovnik.

9. člen

Spori med vlagateljem in pogodbenico

1. Kakršen koli spor v zvezi z naložbo med vlagateljem ene pogodbenice in drugo pogodbenico se, če je le mogoče, rešuje po mirni poti.
2. Vsaka pogodbenica s tem soglaša, da bo v spravi postopek ali arbitražo Mednarodnemu centru za reševanje investicijskih sporov (ICSID), ki je bil ustanovljen v skladu z Washingtonsko konvencijo z dne 18. marca 1965 o reševanju investicijskih sporov med državami in državljani drugih držav, predložila vsak spor, ki se ni rešil v šestih mesecih od datuma, ko ga je katera koli stranka sprožila. Če imata stranki v sporu različna mnenja o tem, ali je za rešitev spora primernejši spravi postopek ali arbitraža, ima pravico do izbire vlagatelj. Spor se prav tako lahko po izbiri vlagatelja predloži v

Article 8

Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled by negotiations through diplomatic channels.
2. If the dispute cannot thus be settled within six (6) months, following the date on which such negotiations were requested by either Contracting Party, it shall at 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 (2) 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 three (3) 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 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 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 its decision by a majority of votes. The decisions of the Tribunal shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the member appointed by that Contracting Party and of its representatives at the arbitral proceedings. Both Contracting Parties shall assume an equal share of the cost of the Chairman, as well as any other costs. The Tribunal may make a different decision regarding the sharing of the costs. In all other respects, the Tribunal court shall determine its own rules of procedure.

Article 9

Disputes between an Investor and a Contracting Party

1. Any dispute concerning an investment between and investor of one Contracting Party and the other Contracting Party shall, if possible, be settled amicably.
2. Each Contracting Party hereby consents to submit to the International Centre for Settlement of Investment Disputes (ICSID) for settlement by conciliation or arbitration under the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States any such dispute which has not been settled within six months following the date, on which the dispute has been raised by either party. If the parties to such a dispute have different opinions as to whether conciliation or arbitration is the more appropriate method of settlement, the investor

reševanje z zavezujočo arbitražo ad hoc arbitražnemu sodišču, ustanovljenemu v skladu z Arbitražnimi pravili Komisije Združenih narodov za mednarodno trgovinsko pravo (UNCITRAL).

3. Za namen tega člena in v skladu s točko b) drugega odstavka 25. člena omenjene Washingtonske konvencije se vsaka pravna oseba, ki je ustanovljena v skladu z zakonodajo ene pogodbenice in je bila pred nastankom spora pod nadzorom vlagatelja druge pogodbenice, obravnava kot pravna oseba druge pogodbenice.

Imenovanja v skladu z Arbitražnimi pravili UNCITRAL opravi predsednik, podpredsednik ali naslednji po funkciji najstarejši sodnik Meddržavnega sodišča, ki ni državljan ene od pogodbenic. Tretji član razsodišča ne sme biti državljan nobene pogodbenice.

4. Kakršna koli arbitraža po Arbitražnih pravilih UNCITRAL poteka v državi, ki je pogodbenica Konvencije Združenih narodov o priznavanju in uveljavljanju tujih arbitražnih odločb, podpisane v New Yorku 10. junija 1958.

5. S pristankom obeh pogodbenic iz drugega odstavka in z vlagateljevo predložitvijo spora v skladu z omenjenimi odstavki so izpolnjene zahteve:

- a) II. poglavja Washingtonske konvencije (pristojnost centra) in dodatnih predpisov za pisno soglasje strank v sporu;
- b) 1. člena Arbitražnih pravil UNCITRAL za pisni dogovor pogodbenih strank o predložitvi spora v arbitražo in
- c) 2. člena Konvencije Združenih narodov o priznavanju in uveljavljanju tujih arbitražnih odločb, podpisane v New Yorku 10. junija 1958, za "pisni dogovor".

6. Vsaka arbitražna odločba, izdana v skladu s tem členom, je dokončna in zavezujoča za obe stranki v sporu. Vsaka pogodbenica nemudoma uveljavi določbe takšne odločbe in poskrbi za njeno izvršitev na svojem ozemlju.

7. V nobenem postopku, v katerem se obravnava spor o naložbi, pogodbenica niti v svojo obrambo niti z namenom vložitev protizahtevka ali zahtevka po poravnavi ali iz kakršnega koli drugega razloga ne bo uveljavljala, da je bila odškodnina ali drugo nadomestilo za vso ali del domnevne škode prejeto na podlagi zavarovalne ali jamstvene pogodbe, pri čemer si pogodbenici zagotavljata, da se lahko zahteva dokazilo, da stranka, ki plača odškodnino soglašala s tem, da vlagatelj uveljavlja pravico do odškodnine.

10. člen

Uporaba drugih predpisov

Če bi zakonske določbe ene ali druge pogodbenice ali obveznosti po mednarodnem pravu, ki že obstajajo ali bodo vzpostavljene po začetku veljavnosti tega sporazuma poleg tega sporazuma vsebovale splošna ali posebna pravila, ki bi naložbam vlagatelj iz druge države pogodbenice zagotavljala ugodnejšo obravnavo, kot jo predvideva ta sporazum,

shall have the right to choose. The dispute may also, at the choice of the investor, be submitted for settlement by binding arbitration to an ad hoc arbitral tribunal to be set up under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. For the purpose of this Article and in accordance with Article 25 (2) (b) of the said Washington Convention, any legal person which is constituted in accordance with the legislation of one Contracting Party and which, before a dispute arises, is controlled by an investor of the other Contracting Party, shall be treated as a legal person of the other Contracting Party.

The appointing authority under the UNCITRAL Arbitration Rules shall be the President, the Vice-President or the next senior Judge of the International Court of Justice, who is not a national of either Contracting Party. The third arbitrator shall not be a national of either Contracting Party.

4. Any arbitration under the Arbitration Rules of UNCITRAL shall be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

5. The consent given by each Contracting Party in paragraph (2) and the submission of the dispute by an investor under the said paragraph shall satisfy the requirement of:

- (a) Chapter II of the Washington Convention (Jurisdiction of the Centre) for written consent of the parties to a dispute;
- (b) Article 1 of the UNCITRAL Arbitration Rules for an agreement in writing on referral to arbitration by the parties to a contract; and
- (c) Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958, for an agreement in writing.

6. Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out without delay the provisions of any such award and provide in its territory for the enforcement of such award.

7. In any proceeding involving an investment dispute, a Contracting Party shall not assert, as a defense, counterclaim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received pursuant to an insurance or guarantee contract provided that the Contracting Party may require evidence that the compensating party agrees to that the investor exercises the right to claim compensation.

Article 10

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 this Agreement contain a regulation, whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favourable than is

bodo te določbe v obsegu, v katerem so ugodnejše, prevladale nad tem sporazumom.

11. člen

Uporaba sporazuma

1. Ta sporazum se uporablja za vse naložbe, ne glede na to ali so bile izvedene pred začetkom njegove veljavnosti ali po njem, vendar pa se ne uporablja za noben spor v zvezi z naložbo, ki se je začel pred začetkom njegove veljavnosti, niti za noben zahtevek v zvezi z naložbo, ki je bil poravnan pred začetkom njegove veljavnosti.
2. Vlagatelji iz 1. člena 3 c) odstavka ne smejo vložiti zahtevka na podlagi tega sporazuma, če so bile v zvezi z isto zadevo že uporabljene določbe drugega sporazuma o zaščiti naložb.

12. člen

Posvetovanja

Predstavniki pogodbenic se, kadar koli je potrebno, posvetujejo o kakršni koli zadevi v zvezi z uresničevanjem tega sporazuma. Posvetovanja so na predlog ene ali druge pogodbenice v kraju in ob času, za katera se dogovorita po diplomatski poti.

13. člen

Začetek veljavnosti, trajanje in odpoved

1. Pogodbenici se uradno obvestita, ko so izpolnjene notranjepravne zahteve za začetek veljavnosti tega sporazuma. Sporazum začne veljati prvi dan po prejemu zadnjega uradnega obvestila.
2. Sporazum velja za začetno obdobje petnajstih (15) let in se šteje za obnovljenega pod istimi pogoji za nadaljnjih petnajst (15) let in tako naprej, razen če dvanajst (12) mesecev pred iztekom njegove veljavnosti ena pogodbenica pisno ne obvesti druge pogodbenice o svoji nameri, da ga odpoveduje.
3. Za naložbe, izvedene pred datumom prenehanja veljavnosti tega sporazuma, veljajo določbe členov od 1. do 12. še nadaljnjih petnajst (15) let od dneva prenehanja veljavnosti tega sporazuma.

Da bi to potrdila, sta za to pravilno pooblaščen predstavnika podpisala ta sporazum.

Sestavljeno v dveh izvodih v Stockholmu dne 05. oktobra 1999 v slovenskem, švedskem in angleškem jeziku, pri čemer so vsa besedila enako verodostojna. Pri razlikah v razlagi prevlada angleško besedilo.

Za Vlado
Republike Slovenije
dr. Marjan Senjur, l. r.

Za Vlado
Kraljevine Švedske
Leif Pagrotsky, l. r.

provided for by this Agreement, such provisions shall, to the extent that they are more favourable, prevail over this Agreement.

Article 11

Application of the Agreement

1. This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled, before its entry into force.
2. Investors referred to in Article 1 paragraph 3 c) may not raise a claim based on this Agreement if in respect of the same matter the provisions of another investment protection agreement have been invoked.

Article 12

Consultations

Representatives of the Contracting Parties shall, whenever necessary, hold consultations on any matter affecting the implementation of this Agreement. These consultations shall be held, on the proposal of either Contracting Party, at a place and a time to be agreed upon through diplomatic channels.

Article 13

Entry into Force, Duration and Termination

1. The Contracting Parties shall notify each other when the constitutional requirements for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the first day following the date of receipt of the last notification.
2. This Agreement shall remain in force initially for a period of fifteen (15) years and shall be considered as renewed on the same terms for a period of fifteen (15) years and so forth, unless twelve (12) months before its expiration either Contracting Party notifies the other in writing of its intention to terminate the Agreement.
3. In respect of investment made prior to the date of termination of this Agreement the provisions of Articles 1 to 12 shall remain in force for a further period of fifteen (15) years from the date of termination of this Agreement.

IN WITNESS WHEREOF, the undersigned representatives, duly authorized thereto, have signed the present Agreement.

Done in duplicate at Stockholm on 5 October 1999 in the Slovenian, Swedish and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of
the Republic of Slovenia
dr. Marjan Senjur (s)

For the Government of
the Kingdom of Sweden
Leif Pagrotsky (s)

P R O T O K O L

Ob podpisu sporazuma o spodbujanju in medsebojni zaščiti naložb med Vlado Republike Slovenije in Vlado Kraljevine Švedske so se pooblaščenimi podpisniki sporazumeli tudi o naslednjih določbah, ki so sestavni del tega sporazuma:

V zvezi s 1. členom odstavka 3 c) tega sporazuma:

Nadzor pravne osebe pomeni dejanski nadzor, ki se ugotovi po proučitvi dejanskih okoliščin za vsak primer posebej. Pri vsakem takšnem proučevanju je treba upoštevati vse pomembne dejavnike, vključno:

- a) z vlagateljevim finančnim upravičenjem, vključno s kapitalsko udeležbo v pravni osebi;
- b) s sposobnostjo vlagatelja, da bistveno vpliva na upravljanje in delovanje pravne osebe; in
- c) sposobnostjo vlagatelja, da bistveno vpliva na izbiro članov upravnega odbora ali katerega koli drugega upravnega organa.

Če obstaja dvom o tem, ali vlagatelj neposredno ali posredno nadzoruje pravno osebo, mora vlagatelj, ki trdi, da tak nadzor obstaja, to tudi sam dokazati.

Sestavljeno v dveh izvodih v Stockholmu dne 05. oktobra 1999 v slovenskem, švedskem in angleškem jeziku, pri čemer so vsa besedila enako verodostojna. Pri razlikah v razlagi prevlada angleško besedilo.

Za Vlado
Republike Slovenije
dr. Marjan Senjur, l. r.

Za Vlado
Kraljevine Švedske
Leif Pagrotsky, l. r.

P R O T O C O L

At the signing of the Agreement on the Promotion and Mutual Protection of Investments between the Government of the Republic of Slovenia and the Government of the Kingdom of Sweden, the authorized signatories agreed also on the following provisions which are considered as part of the Agreement:

With reference to Article 1 paragraph 3 c) of this Agreement:

Control of a legal person means control in fact, determined after examination of the actual circumstances in each situation. In any such examination, all relevant factors should be considered, including the investor's:

- (a) financial interest, including equity interest, in the legal person;
- (b) ability to exercise substantial influence over the management and operation of the legal person; and
- (c) ability to exercise substantial influence over the selection of members of the board of directors or any other managing body.

Where there is doubt as to whether an investor controls, directly or indirectly, a legal person, an investor claiming such control has the burden of proof that such control exists.

Done in duplicate at Stockholm on 5 October 1999 in the Slovenian, Swedish and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of
the Republic of Slovenia
dr. Marjan Senjur (s)

For the Government of
the Kingdom of Sweden
Leif Pagrotsky (s)

3. člen

Za izvajanje sporazuma s protokolom skrbi Ministrstvo za ekonomske odnose in razvoj.

4. člen

Ta zakon začne veljati naslednji dan po objavi v Uradnem listu Republike Slovenije – Mednarodne pogodbe.

Št. 410-01/00-33/1
Ljubljana, dne 31. januarja 2001

Predsednik
Državnega zbora
Republike Slovenije
Borut Pahor l. r.