

53. Zakon o ratifikaciji Sporazuma med Vlado Republike Slovenije in Vlado Malte o medsebojnem spodbujanju in zaščiti naložb s protokolom (BMTSZN)

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 MALTE O MEDSEBOJNEM SPODBUJANJU IN ZAŠČITI NALOŽB S PROTOKOLOM (BMTSZN)

Razglašam Zakon o ratifikaciji Sporazuma med Vlado Republike Slovenije in Vlado Malte o medsebojnem spodbujanju in zaščiti naložb s protokolom (BMTSZN), ki ga je sprejel Državni zbor Republike Slovenije na seji 3. oktobra 2001.

Št. 001-22-112/01
Ljubljana, 11. oktobra 2001

Predsednik
Republike Slovenije
Milan Kučan l. r.

Z A K O N

O RATIFIKACIJI SPORAZUMA MED VLADO REPUBLIKE SLOVENIJE IN VLADO MALTE O MEDSEBOJNEM SPODBUJANJU IN ZAŠČITI NALOŽB S PROTOKOLOM (BMTSZN)

1. člen

Ratificira se Sporazum med Vlado Republike Slovenije in Vlado Malte o medsebojnem spodbujanju in zaščiti naložb s protokolom, podpisan v Ljubljani 15. marca 2001.

2. člen

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

**A G R E E M E N T
BETWEEN THE GOVERNMENT
OF THE REPUBLIC OF SLOVENIA
AND THE GOVERNMENT OF MALTA
ON THE MUTUAL PROMOTION AND
PROTECTION OF INVESTMENTS**

**S P O R A Z U M
MED VLADO REPUBLIKE SLOVENIJE
IN VLADO MALTE
O MEDSEBOJNEM SPODBUJANJU IN
ZAŠČITI NALOŽB**

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

Desiring to intensify the economic co-operation between the two States,

Intending to encourage and create favourable conditions for investments made by investors of one Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefit,

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

Have agreed as follows:

**Article 1
Definitions**

For the purpose of this Agreement:

1. The term "investor" shall mean with regard to either Contracting Party:

a) natural persons having the nationality of either Contracting Party, in accordance with its laws; and

b) legal persons, including corporations, commercial or other companies, associations, or any other entities which are incorporated, constituted or registered in accordance with the law of that Contracting Party;

Vlada Republike Slovenije in Vlada Malte, v nadaljevanju pogodbenici, sta se

v želji, da okrepiata gospodarsko sodelovanje med državama,

z namenom, da spodbudita in ustvarita ugodne razmere za naložbe vlagateljev ene pogodbenice na ozemlju druge pogodbenice na podlagi enakopravnosti in obojestranske koristi,

ob spoznanju, da bosta vzajemno spodbujanje in zaščita naložb na podlagi tega sporazuma spodbujala poslovne pobude,

sporazumeli, kot sledi:

1. člen

Opredelitev pojmov

Za namen tega sporazuma:

1. Izraz "vlagatelj" pomeni za eno in drugo pogodbenico:

a) fizične osebe, ki so državljani ene ali druge pogodbenice v skladu z njeno zakonodajo, in

b) pravne osebe, vključno s korporacijami, gospodarskimi in drugimi družbami, združenji, ali katere koli druge subjekte, ki so bili ustanovljeni ali registrirani po pravu te pogodbenice,

c) legal persons not incorporated or registered in accordance with the law of that Contracting Party:

i) in which more than 50 per cent of the equity interest is beneficially owned by natural persons having the nationality of that Contracting Party; or

ii) in relation to which natural persons of that Contracting Party have the power to nominate a majority of its directors or otherwise legally direct its actions;

making or having made an investment in the other Contracting Party's territory.

2. The term "investment" by an investor of a Contracting Party shall mean every kind of asset in the territory of one Contracting Party, owned in whole or part or controlled, directly or indirectly, by an investor of the other Contracting Party, including:

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

b) shares, stocks and other forms of equity participation in a company, and rights derived therefrom;

c) bonds, debentures, loans and other forms of debt, and rights derived therefrom;

d) claims to money or to any performance having an economic value and associated with an investment;

e) rights in the field of intellectual property, technical processes, goodwill and know-how;

f) any right, whether conferred by law or an administrative act by a competent state authority, or by contract, including concessions for prospecting, research and exploitation of natural resources.

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.

3. The term "returns" shall mean the amounts yielded by investments and in particular, though not exclusively, shall include profits, dividends, interests, royalties or other forms of income related to the investments, including licenses and other fees.

4. The term "territory" shall mean with respect to each Contracting Party the territory under its sovereignty, including air space and maritime areas, over which the Party concerned exercises its sovereignty or jurisdiction, in accordance with internal and international law.

5. The term "indirect control" shall mean 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 investment;

b) ability to exercise substantial influence over the management and operation of the investment; 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, an investment, an investor claiming such control has the burden of proof that such control exists.

Article 2

Promotion and Protection of Investments

1. Each Contracting Party shall promote and encourage, as far as possible, within its territory investments by investors of the other Contracting Party and shall admit such investments into its territory in accordance with its laws and regulations.

c) pravne osebe, ki niso ustanovljene ali registrirane po pravu te pogodbenice,

i) v katerih so fizične osebe, ki imajo državljanstvo te pogodbenice, upravičene uresničevati nad 50 odstotkov pravic iz kapitalske udeležbe ali

ii) v zvezi s katerimi so fizične osebe te pogodbenice pooblaščenice, da imenujejo večino njihovih direktorjev ali drugače pravno usmerjajo njihova dejanja, ki izvajajo ali so izvedle naložbo na ozemlju druge pogodbenice.

2. Izraz "naložba" vlagatelja pogodbenice pomeni vsako vrsto premoženja na ozemlju ene pogodbenice, ki je v celoti ali delno v lasti ali pod neposrednim ali posrednim nadzorom vlagatelja druge pogodbenice, kar vključuje:

a) premoženje in nepremičnine ter katere koli druge stvarne pravice, kot so hipoteka, zaseg, zastava in podobne pravice;

b) deleže, delnice in druge oblike kapitalske udeležbe v družbi ter pravice, ki iz njih izhajajo;

c) obveznice, zadolžnice, posojila in druge oblike dolga ter pravice, ki iz njih izhajajo;

d) denarne terjatve in zahtevke za storitve, ki imajo ekonomsko vrednost in so povezane z naložbo;

e) pravice na področju intelektualne lastnine, tehnične postopke, dobro ime in know-how;

f) katero koli pravico, vključno s koncesijami za iskanje, raziskovanje in izkoriščanje naravnih virov, ki jih z zakonom ali upravnim aktom podeljuje pristojni državni organ ali ki se podelijo s pogodbo.

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.

3. Izraz "dohodek" pomeni zneske, ki jih prinašajo naložbe, in vključuje zlasti, vendar ne izključno, dobiček, dividende, obresti, avtorske honorarje ali druge oblike dohodka, povezanega z naložbami, vključno z licenčninami in drugimi honorarji.

4. Izraz "ozemlje" pomeni za vsako pogodbenico ozemlje pod njeno suverenostjo, vključno z zračnim prostorom in morskimi območji, nad katerimi pogodbenica uresničuje svojo suverenost ali jurisdikcijo v skladu z notranjim in mednarodnim pravom.

5. Izraz "posredni nadzor" pomeni dejanski nadzor, ugotovljen po pregledu dejanskih okoliščin za vsak primer posebej. Pri katerem koli takem pregledu je treba upoštevati vse pomembne dejavnike, vključno z vlagateljevimi:

a) finančnimi upravičenji pri naložbi, vključno s kapitalsko udeležbo,

b) zmožnostmi, da znatno vpliva na upravljanje in izvajanje naložbe, in

c) zmožnostmi, da znatno vpliva na izbiro članov upravnega odbora ali katerega koli drugega organa upravljanja.

Če obstaja dvom, ali vlagatelj neposredno ali posredno nadzira določeno naložbo, nosi dokazno breme vlagatelj, ki trdi, da naložbo nadzira.

2. člen

Spodbujanje in zaščita naložb

1. Vsaka pogodbenica na svojem ozemlju pospešuje in spodbuja, kolikor je mogoče, naložbe vlagateljev druge pogodbenice in sprejema take naložbe na svoje ozemlje v skladu s svojimi zakoni in predpisi.

2. Each Contracting Party shall accord at all times fair and equitable treatment to investments by investors of the other Contracting Party.

3. Investments by investors of either Contracting Party shall enjoy full and constant protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment, disposal or liquidation of investments in its territory by investors of the other Contracting Party.

Article 3

National and Most Favoured Nation Treatment

1. With respect to the management, operation, maintenance, use, enjoyment, sale and liquidation of an investment, each Contracting Party shall accord to investors of the other Contracting Party and to their investments treatment no less favourable than that it accords to its own investors and their investments or to investors of any third country and their investments, whichever is more favourable to the investor.

2. 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 membership in a free trade area, customs union, common market, economic community or any multilateral agreement on investment;
- b) any international agreement regarding taxation.

Article 4

Transparency

1. Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, procedures as well as international agreements which may affect the operation of this Agreement.

2. Each Contracting Party shall give sympathetic consideration to specific questions and provide, upon request, information to the other Contracting Party on matters referred to in paragraph 1.

3. No Contracting Party shall be required to furnish or allow access to information concerning particular investors or investments the disclosure of which would impede law enforcement or would be contrary to its laws and regulations protecting confidentiality.

Article 5

Expropriation and Compensation

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 nationalisation (hereinafter referred to as "expropriation") except for a public purpose, on a non-discriminatory basis, under due process of law and against prompt, effective and adequate compensation.

2. The compensation referred to in paragraph 1 of this Article shall be computed on the basis of the fair market value of the investment immediately before the expropriation or impending expropriation became public knowledge, whichever is earlier. The compensation shall be paid in a freely convertible currency without delay and shall include interest at the usual commercial rate or the three month London Interbank Offered Rate (LIBOR) from the date of expropriation to the date of payment and shall be freely transferable and effectively realisable. In case of delay any exchange rate loss arising from this delay shall be borne by the expropriating Contracting Party.

2. Vsaka pogodbenica naložbam vlagateljev druge pogodbenice trajno zagotavlja pošteno in pravično obravnavo.

3. Naložbe vlagateljev ene ali druge pogodbenice so deležne popolne in trajne zaščite in varnosti na ozemlju druge pogodbenice. Nobena pogodbenica z neupravičenimi, samovoljnimi ali diskriminacijskimi ukrepi na svojem ozemlju na noben način ne sme ovirati vlagateljev druge pogodbenice pri upravljanju, vzdrževanju, uporabi in uživanju naložb, pri razpolaganju z njimi ali pri njihovi likvidaciji.

3. člen

Nacionalna obravnava in obravnava po načelu države z največjimi ugodnostmi

1. Glede upravljanja, izvajanja, vzdrževanja, uporabe in uživanja naložb, njihove prodaje ali likvidacije zagotavlja vsaka pogodbenica vlagateljem druge pogodbenice in njihovim naložbam obravnavo, ki ni manj ugodna od tiste, ki jo zagotavlja svojim lastnim vlagateljem in njihovim naložbam ali vlagateljem katere koli tretje države in njihovim naložbam, kar je za vlagatelja ugodnejše.

2. Določb tega člena ni mogoče razlagati tako, da obvezujejo eno pogodbenico, da podeli vlagateljem druge pogodbenice kakršno koli prednostno obravnavo, ugodnost ali privilegij na podlagi:

- a) katerega koli članstva v prostotrgovinskem območju, carinski uniji, skupnem trgu, gospodarski skupnosti ali kakršnem koli večstranskem sporazumu o naložbah,
- b) katerega koli mednarodnega sporazuma, ki se nanaša na obdavčenje.

4. člen

Preglednost

1. Vsaka pogodbenica nemudoma objavi ali kako drugače omogoči javno dostopnost do svojih zakonov, predpisov, postopkov in mednarodnih sporazumov, ki lahko vplivajo na izvajanje tega sporazuma.

2. Vsaka pogodbenica z naklonjenostjo obravnava določena vprašanja in na zahtevo drugi pogodbenici zagotovi informacije o zadevah iz prvega odstavka.

3. Nobeni pogodbenici ni treba priskrbeti informacij o določenih vlagateljih ali naložbah ali omogočiti dostopa do takih informacij, katerih razkritje bi oviralo uveljavitev zakonov ali bilo v nasprotju z njenimi zakoni in predpisi, ki varujejo zaupnost.

5. člen

Razlastitev in nadomestilo

1. Naložbe vlagateljev ene ali druge pogodbenice se na ozemlju druge pogodbenice ne smejo razlastiti, nacionalizirati ali se v zvezi z njimi sprejeti nobeni drugi ukrepi z enakovrednim učinkom, kot ga ima razlastitev ali nacionalizacija (v nadaljevanju razlastitev), razen v javnem interesu, na nediskriminacijski podlagi, v skladu z zakonitim postopkom in za takojšnje, učinkovito in ustrezno nadomestilo.

2. Nadomestilo iz prvega odstavka tega člena se izračuna na podlagi poštene tržne vrednosti naložbe tik pred razlastitvijo ali tik preden je nameravana razlastitev postala javno znana, kar je prej. Nadomestilo se plača v prosto zamenljivi valuti brez odlašanja in vključuje obresti po običajni komercialni stopnji ali po trimesečni londonski medbančni obrestni meri (LIBOR) od datuma razlastitve do datuma plačila; biti mora prosto prenosljivo in dejansko izplačljivo. Ob zamudi pogodbenica, ki je naložbo razlastila, krije izgubo zaradi menjalnega tečaja, ki izhaja iz take zamude.

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

Article 6

Compensation for Losses

1. 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, whichever is more favourable.

2. An investor of a Contracting Party who in any of the events referred to in paragraph 1 suffers loss resulting from:

- a) requisitioning of its investment or part thereof by the forces or authorities of the other Contracting Party; or
- b) destruction of its investment or part thereof by the forces or authorities of the other Contracting Party,

shall in any case be accorded by the latter Contracting Party restitution or compensation which in either case shall be prompt, adequate and effective and, with respect to compensation, shall be in accordance with paragraphs 2 and 3 of Article 5.

Article 7

Transfers

1. Each Contracting Party shall guarantee investors of the other Contracting Party the free transfer into and out of its territory of funds related to their investments and in particular, though not exclusively:

- a) initial capital and additional contributions for the maintenance or development of the investments;
- b) returns;
- c) payments made under contracts including loan agreements;
- d) proceeds from the sale or liquidation of all or part of an investment;
- e) any compensation or other payment referred to in Articles 5 and 6 of this Agreement;
- f) payments arising out of the settlement of a dispute;
- g) earnings and other remuneration of nationals from the other Contracting Party engaged in connection with the investment.

2. The transfers referred to in this Article shall be made without restriction or delay at the market rate of exchange applicable on the date of transfer and shall be made in a freely convertible currency.

3. In the absence of a market for foreign exchange, the rate to be used shall be the most recent exchange rate for conversion of currencies into Special Drawing Rights.

4. Notwithstanding paragraphs 1 to 3, a Contracting Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

- a) bankruptcy, insolvency or the protection of the rights of creditors;
- b) criminal or penal offences; or
- c) ensuring compliance with orders or judgements in adjudicatory proceedings;

provided that such measures and their application shall not be used as a means of avoiding the Contracting Party's commitments or obligations under this Agreement.

3. Vlagatelj, katerega naložbe so razlaščene, ima po pravu pogodbenice, ki je naložbo razlastila, pravico zahtevati, da sodni ali drug pristojni organ te pogodbenice nemudoma pregleda njegov primer in ovrednoti njegove naložbe v skladu z načeli, določenimi v tem členu.

6. člen

Nadomestilo za izgube

1. Vlagateljem ene pogodbenice, pri naložbah katerih so nastale izgube zaradi vojne ali drugih oboroženih spopadov, revolucije, narodne vstaje, izrednega stanja ali kakega podobnega dogodka na ozemlju druge pogodbenice, ta druga pogodbenica zagotovi glede ukrepov, ki jih sprejme v zvezi s takimi izgubami, vključno z nadomestilom, odškodnino in vzpostavitevjo prejšnjega stanja, obravnavo, ki ni manj ugodna od tiste, ki jo zagotavlja svojim vlagateljem ali vlagateljem katere koli tretje države, kar je za vlagatelja ugodnejše.

2. Vlagatelju pogodbenice, ki ima v katerem koli od primerov iz prvega odstavka izgubo, ki je nastala zaradi:

- a) zaplembe njegove naložbe ali njenega dela, ki so jo izvedle sile ali organi druge pogodbenice, ali
- b) uničenja njegove naložbe ali njenega dela, ki so ga povzročile sile ali organi druge pogodbenice,

druga pogodbenica v vsakem primeru zagotovi vzpostavitev prejšnjega stanja ali nadomestilo, ki je v obeh primerih takojšnje, ustrezno in učinkovito, nadomestilo pa je v skladu z drugim in tretjim odstavkom 5. člena.

7. člen

Prenosi

1. Vsaka pogodbenica jamči vlagateljem druge pogodbenice prost prenos sredstev v zvezi z njihovimi naložbami na svoje ozemlje in z njega ter zlasti, vendar ne izključno:

- a) začetnega kapitala in dodatnih prispevkov za vzdrževanje ali razvoj naložb;
- b) dohodka;
- c) plačil po pogodbah, vključno s posojilnimi pogodbami;
- d) izkupička od celotne ali delne prodaje ali likvidacije naložbe;
- e) kakršnega koli nadomestila ali drugega plačila iz 5. in 6. člena tega sporazuma;
- f) plačil, ki izhajajo iz rešitve spora;
- g) zaslužkov ali drugih prejemkov državljanov druge pogodbenice, zaposlenih v zvezi z naložbo.

2. Prenosi po tem členu se opravijo brez omejitev ali odlašanja po tržnem menjalnem tečaju, ki velja na datum prenosa, in v prosto zamenljivi valuti.

3. Če ni trga tujega denarja, se za tečaj uporabi zadnji menjalni tečaj za menjavo valut v posebne pravice črpanja.

4. Ne glede na prvi, drugi in tretji odstavek lahko pogodbenica prepreči prenos s pravično, nediskriminacijsko in dobronamerno uporabo svoje zakonodaje, ki se nanaša na:

- a) stečaj, plačilno nesposobnost ali varstvo pravic upnikov,
- b) kazniva dejanja ali
- c) zagotavljanje spoštovanja odredb ali sodb v sodnih postopkih,

pod pogojem, da taki ukrepi in njihova uveljavitev niso sredstvo za izogibanje zavezam ali obveznostim pogodbenice po tem sporazumu.

Article 8

Subrogation

If a Contracting Party or its designated agency makes a payment to its investor under an indemnity, guarantee or contract of insurance given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party or its designated agency of all rights and claims of the investor and the right of the former Contracting 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.

Article 9

Other Obligations

Each Contracting Party shall observe any obligation it may have entered into with regard to specific investments by investors of the other Contracting Party.

Article 10

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

1. Any dispute which may arise between one Contracting Party and an investor of the other Contracting Party concerning an alleged breach of an obligation of the former under this Agreement which causes loss or damage to the investor or its investment shall be settled amicably through negotiations.

2. If such a dispute cannot be settled within a period of three (3) months from the date of request for settlement, the investor concerned may submit the dispute to:

- a) the competent court or administrative tribunal of the Contracting Party; or
- b) conciliation or arbitration established under:
 - i) the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or
 - ii) the rules of arbitration of the International Chamber of Commerce (ICC); or
 - iii) the rules of the International Centre for the Settlement of Investment Disputes (ICSID), established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States (the "ICSID Convention"), opened for signature in Washington, D.C., on March 18, 1965, under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre, if either of the Contracting Parties is a party to the ICSID Convention; or
 - c) any other form of arbitration agreed upon by the parties to the dispute.

3. Each Contracting Party hereby consents unconditionally to the submission of an investment dispute to international conciliation or arbitration. This consent implies the renunciation of the requirement that the internal administrative or judicial remedies should be exhausted.

4. A Contracting Party shall not assert as a defence, counter-claim, 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 or will be received in terms of Article 8 of this Agreement.

5. Issues in dispute under Article 9 shall be decided, in the absence of any other agreement, in accordance with the law of the Contracting Party, party to the dispute, including its rules on the conflict of laws, the law governing the contract agreed to between the Contracting Party and the investor of the other Contracting Party, and such rules of international law as may be applicable.

6. The award shall be final and binding on both parties to the dispute. Each Contracting Party shall ensure prompt and effective recognition and enforcement of awards made pursuant to this Article.

8. člen

Subrogacija

Če pogodbenica ali agencija, ki jo ta določi, opravi plačilo svojemu vlagatelju na podlagi danega jamstva, garancije ali pogodbe o zavarovanju v zvezi z naložbo na ozemlju druge pogodbenice, ta druga pogodbenica prizna prenos vseh pravic in zahtevkov vlagatelja na prvo pogodbenico ali na agencijo, ki jo ta določi, in pravico prve pogodbenice ali agencije, ki jo ta določi, da na podlagi subrogacije uresničuje katero koli tako pravico ali zahtevek v enakem obsegu kot njen pravni predhodnik.

9. člen

Druge obveznosti

Vsaka pogodbenica spoštuje katero koli obveznost, ki jo je prevzela glede določenih naložb vlagateljev druge pogodbenice.

10. člen

Reševanje sporov med pogodbenico in vlagateljem druge pogodbenice

1. Kakršen koli spor, ki lahko nastane med pogodbenico in vlagateljem druge pogodbenice v zvezi z domnevno kršitvijo obveznosti prve po tem sporazumu in povzroči vlagatelju ali njegovi naložbi izgubo ali škodo, se rešuje po mirni poti s pogajanjem.

2. Če takega spora ni mogoče rešiti v treh (3) mesecih po datumu zahteve za rešitev, lahko prizadeti vlagatelj spor predloži:

- a) pristojnemu sodišču ali upravnemu sodišču pogodbenice ali
- b) v spravo ali arbitražo, ustanovljeno po:
 - i) arbitražnih pravilih Komisije Združenih narodov za mednarodno trgovinsko pravo (UNCITRAL) ali
 - ii) pravilih arbitraže Mednarodne trgovinske zbornice (ICC) ali
 - iii) pravilih Mednarodnega centra za reševanje investicijskih sporov (ICSID), ustanovljenega na podlagi Konvencije o reševanju investicijskih sporov med državami in državljani drugih držav (konvencija ICSID), ki je bila dana na voljo za podpis v Washingtonu D.C. 18. marca 1965, po pravilih, ki urejajo Dodatni dogovor za vodenje postopkov s strani Sekretariata Centra, če je ena ali druga pogodbenica tudi pogodbenica konvencije ICSID, ali
 - c) kateri koli drugi obliki arbitraže, za katero se dogovorita stranki v sporu.

3. Vsaka pogodbenica brezpogojno soglaša s predložitvijo investicijskega spora mednarodni spravi ali arbitraži. To soglasje vključuje odpoved zahtevi, da je treba prej izčrpati notranja upravna ali sodna pravna sredstva.

4. Pogodbenica ne uveljavlja kot obrambo, protizahtevek, pravico do pobota ali iz katerega koli drugega razloga tega, da je bila ali bo prejeta po določilih 8. člena tega sporazuma odškodnina ali drugo nadomestilo za vso domnevno škodo ali njen del.

5. Če ni drugačnega dogovora, se o spornih zadevah po 9. členu odloči v skladu s pravom pogodbenice, ki je stranka v sporu, vključno z njenimi kolizijskimi pravili, pravom, ki ureja pogodbo med pogodbenico in vlagateljem druge pogodbenice, in ustreznimi pravili mednarodnega prava.

6. Arbitražna odločba je dokončna in zavezujoča za stranki v sporu. Vsaka pogodbenica zagotovi takojšnje in učinkovito priznanje in izvršitev arbitražnih odločb, izdanih po tem členu.

Article 11

Settlement of 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 amicably by negotiations through diplomatic channels.

2. If the Contracting Parties fail to reach a settlement within three (3) months after the beginning of negotiations, the dispute shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal, in accordance with the provisions of this Article.

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, with which both Contracting Parties maintain diplomatic relations, 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 rule according to majority vote. The decisions of the tribunal shall be final and binding on both Contracting Parties.

6. Each Contracting Party shall be responsible for the costs of its own member and of its representation in 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 costs.

7. In all other respects, the tribunal shall define its own rules of procedure, unless the parties decide otherwise.

Article 12

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

Article 13

Application of the Agreement

This Agreement shall apply to all investments made by investors from one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations existing at or made after its entry into force. This Agreement shall not apply to disputes that have arisen before its entry into force.

Article 14

Consultations

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

11. člen

Reševanje sporov med pogodbenicama

1. Spori med pogodbenicama v zvezi z razlago in uporabo tega sporazuma se, kolikor je mogoče, rešujejo mirno s pogajanjem po diplomatski poti.

2. Če pogodbenici spora ne rešita v treh (3) mesecih od začetka pogajanj, se spor na zahtevo ene ali druge pogodbenice predloži arbitražnemu sodišču v skladu z določbami tega člena.

3. Tako arbitražno sodišče se ustanovi za vsak posamezen primer na naslednji način. V dveh mesecih od prejema zahtevka za arbitražo imenuje vsaka pogodbenica enega člana sodišča. Ta dva člana nato izbereta državljana tretje države, s katero imata obe pogodbenici diplomatske odnose, ki se po odobritvi pogodbenic imenuje za predsednika sodišča. Predsednika se imenuje v treh (3) mesecih od datuma, 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, zaprosi predsednika Meddržavnega sodišča, da opravi potrebna imenovanja. Če je predsednik državljan ene ali druge pogodbenice ali drugače ne more opraviti te naloge, se zaprosi podpredsednik, da opravi potrebna imenovanja. Če je podpredsednik državljan ene ali druge pogodbenice ali ne more opraviti te naloge, se zaprosi po funkciji naslednji najstarejši član Meddržavnega sodišča, ki ni državljan ene ali druge pogodbenice, da opravi potrebna imenovanja.

5. Arbitražno sodišče odloča z večino glasov. Odločitve arbitražnega sodišča so za pogodbenici dokončne in zavezujoče.

6. Vsaka pogodbenica krije stroške svojega člana in svojega zastopstva v arbitražnem postopku. Pogodbenici prevzmeta stroške za predsednika in druge stroške v enakih delih. Glede stroškov lahko arbitražno sodišče odloči tudi drugače.

7. Glede vseh drugih zadev arbitražno sodišče samo določi svoj poslovnik, če se stranki ne odločita drugače.

12. člen

Uporaba drugih pravil

Če bi zakonske določbe ene ali druge pogodbenice ali obstoječe ali prihodnje obveznosti pogodbenic po mednarodnem pravu poleg tega sporazuma vsebovale splošna ali posebna pravila, ki bi naložbam vlagateljev druge pogodbenice zagotavljala ugodnejšo obravnavo, kot jo predvideva ta sporazum, take določbe, kolikor so ugodnejše, prevladajo nad tem sporazumom.

13. člen

Uporaba sporazuma

Ta sporazum se uporablja za vse naložbe vlagateljev iz ene pogodbenice na ozemlju druge pogodbenice v skladu z njenimi zakoni in predpisi, ki so obstajale ob začetku njegove veljavnosti ali so bile izvedene po njem. Ta sporazum se ne uporablja za spore, ki so nastali pred začetkom njegove veljavnosti.

14. člen

Posvetovanja

Vsaka pogodbenica lahko po potrebi predlaga posvetovanja o kateri koli zadevi, ki vpliva na izvajanje tega sporazuma. O kraju in času teh posvetovanj se dogovori po diplomatski poti.

Article 15

Entry into force and Duration

1. This Agreement shall enter into force on the first day after the day of the receipt of the last diplomatic note confirming that the Contracting Parties have complied with the conditions provided for by national legislation for the entry into force of the present Agreement.

2. This Agreement shall remain in force for a period of ten (10) years and shall be considered as renewed on the same terms for a period of ten (10) 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 investments made prior to the date of termination of this Agreement the provisions of Articles 1 to 14 shall remain in force for a further period of ten (10) years from the date of termination of this Agreement.

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

Done in duplicate at Ljubljana on 15 March 2001 in the English language.

For the Government of
the Republic of Slovenia:
dr. Tea Petrin, (s)

For the Government of
Malta:
dr. Louis Galea, (s)

PROTOCOL

At the signing of the Agreement between the Government of the Republic of Slovenia and the Government of Malta on the Mutual Promotion and Protection of Investments, the authorised representatives agreed also on the following provision which is considered as part of the Agreement:

Ad Article 1, para. 1c

Investors referred to in Article 1 paragraph 1c 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.

IN WITNESS WHEREOF, the undersigned representatives, duly authorised thereto, have signed this Protocol.

DONE in duplicate at Ljubljana on 15 March 2001 in the English language.

For the Government of
the Republic of Slovenia:
dr. Tea Petrin, (s)

For the Government of
Malta:
dr. Louis Galea, (s)

3. člen

Za izvajanje sporazuma s protokolom skrbi Ministrstvo za gospodarstvo.

4. člen

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

Št. 410-01/01-34/1

Ljubljana, dne 3. oktobra 2001

15. člen

Začetek veljavnosti in trajanje

1. Sporazum začne veljati prvi dan po dnevu prejema zadnje diplomatske note, ki potrjuje, da sta pogodbenici izpolnili notranjepravne pogoje za začetek veljavnosti tega sporazuma.

2. Sporazum velja za obdobje desetih (10) let in se šteje, da je podaljšan pod enakimi pogoji še za deset (10) let in tako naprej, razen če ena ali druga pogodbenica dvanajst (12) mesecev pred iztekom njegove veljavnosti pisno obvesti drugo pogodbenico o svoji nameri, da odpove sporazum.

3. Za naložbe, ki so bile izvedene pred datumom prenehanja veljavnosti sporazuma, veljajo določbe od 1. do 14. člena še za nadaljnje obdobje desetih (10) let od datuma prenehanja veljavnosti tega sporazuma.

V DOKAZ TEGA sta za to pravilno pooblaščen predstavnika podpisala ta sporazum.

Sestavljeno v dveh izvodih v Ljubljani, dne 15. marca 2001, v angleškem jeziku.

Za Vlado
Republike Slovenije:
dr. Tea Petrin l. r.

Za Vlado
Malte:
dr. Louis Galea l. r.

PROKOL

Ob podpisu Sporazuma med Vlado Republike Slovenije in Vlado Malte o medsebojnem spodbujanju in zaščiti naložb sta se pooblaščen predstavnika sporazumela tudi o naslednji določbi, ki je sestavni del sporazuma:

K točki c) prvega odstavka 1. člena

Vlagatelji iz točke c) prvega odstavka 1. člena ne smejo vložiti zahtevka na podlagi tega sporazuma, če so bile za isto zadevo že uporabljene določbe kakega drugega sporazuma o zaščiti naložb.

V DOKAZ TEGA sta za to pravilno pooblaščen predstavnika podpisala ta protokol.

Sestavljeno v dveh izvodih v Ljubljani, dne 15. marca 2001, v angleškem jeziku.

Za Vlado
Republike Slovenije:
dr. Tea Petrin l. r.

Za Vlado
Malte:
dr. Louis Galea l. r.

Predsednik
Državnega zbora
Republike Slovenije
Borut Pahor l. r.