

55. Zakon o ratifikaciji Sporazuma med Republiko Slovenijo in Republiko Avstrijo o medsebojnem spodbujanju in zaščiti naložb (BATSZN)

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 REPUBLIKO SLOVENIJO IN REPUBLIKO AVSTRIJO O MEDSEBOJNEM SPODBUJANJU IN ZAŠČITI NALOŽB (BATSZN)**

Razgllašam Zakon o ratifikaciji Sporazuma med Republiko Slovenijo in Republiko Avstrijo o medsebojnem spodbujanju in zaščiti naložb (BATSZN), ki ga je sprejel Državni zbor Republike Slovenije na seji 3. oktobra 2001.

Št. 001-22-114/01
Ljubljana, 11. oktobra 2001

Predsednik
Republike Slovenije
Milan Kučan l. r.

Z A K O N**O RATIFIKACIJI SPORAZUMA MED REPUBLIKO SLOVENIJO IN REPUBLIKO AVSTRIJO O MEDSEBOJNEM SPODBUJANJU IN ZAŠČITI NALOŽB (BATSZN)**

1. člen

Ratificira se Sporazum med Republiko Slovenijo in Republiko Avstrijo o medsebojnem spodbujanju in zaščiti naložb, podpisan na Dunaju 7. marca 2001.

2. člen

Sporazum se v izvirniku v slovenskem in angleškem jeziku glasi:*

S P O R A Z U M
MED REPUBLIKO SLOVENIJO
IN REPUBLIKO AVSTRIJO
O MEDSEBOJNEM SPODBUJANJU
IN ZAŠČITI NALOŽB

Republika Slovenija in Republika Avstrija, 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 medsebojno spodbujanje in zaščita naložb na podlagi tega sporazuma spodbujala poslovne pobude,

ponovno potrjujoč svojo zavezanost spoštovanju mednarodno priznanih standardov dela, sporazumeli, kot sledi:

1. člen

Opredelitev pojmov

Za namen tega sporazuma:

1. Izraz "vlagatelj" pomeni:

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

A G R E E M E N T

BETWEEN THE REPUBLIC OF SLOVENIA
AND THE REPUBLIC OF AUSTRIA
ON THE MUTUAL PROMOTION AND
PROTECTION OF INVESTMENTS

The Republic of Slovenia and the Republic of Austria, 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,

Reaffirming their commitment to the observance of internationally recognised labour standards,

Have agreed as follows:

Article 1

Definitions

For the purpose of this Agreement:

1. The term " investor" shall mean:

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

* Besedilo sporazuma v nemškem jeziku je na vpogled v Sektorju za mednarodnopravne zadeve Ministrstva za zunanje zadeve Republike Slovenije.

b) pravne osebe, vključno s korporacijami, gospodarskimi in drugimi družbami, združenji, ali katere koli druge subjekte, ki so registrirani ali ustanovljeni v skladu z zakonodajo te pogodbenice,

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 neposredno ali posredno v lasti ali pod nadzorom vlagatelja druge pogodbenice, vključno:

a) s premičninami in nepremičninami ter katerimi koli drugimi stvarnimi pravicami, kot so hipoteka, zaseg, zastava in podobne pravice;

b) z deleži, delnicami in drugimi oblikami kapitalske udeležbe v družbi ter pravicami, ki iz njih izhajajo;

c) z obveznicami, zadolžnicami, posojili in drugimi oblikami dolga ter pravicami, ki iz njih izhajajo;

d) z denarnimi terjatvami ali katerimi koli storitvami, ki imajo ekonomsko vrednost in so povezane z naložbo;

e) s pravicami na področju intelektualne lastnine, tehnoloških procesov, dobrega imena ter know-howa;

f) s 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 ta pogodbenica izvaja 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

a) vlagateljevim finančnim upravičenjem pri naložbi, vključno s kapitalsko udeležbo;

b) vlagateljevo zmožnostjo, da znatno vpliva na upravljanje in izvajanje naložbe, in

c) vlagateljevo zmožnostjo, 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 nadzoruje.

2. člen

Spodbujanje in zaščita naložb

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

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

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

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 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 by 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 licence 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 Contracting 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.

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

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

3. člen

Nacionalna obravnava in obravnava po načelu države z največjimi ugodnostmi

1. Vsaka pogodbenica zagotovi vlagateljem druge pogodbenice in njihovim naložbam obravnavo, ki ni manj ugodna od tiste, ki jo zagotavlja svojim vlagateljem in njihovim naložbam ali vlagateljem katere koli tretje države in njihovim naložbam glede upravljanja, obratovanja, vzdrževanja, uporabe, uživanja, prodaje in likvidacije naložbe, 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 večstranskem sporazumu o naložbah;
- b) katerega koli mednarodnega sporazuma ali katere koli notranje zakonodaje, 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 sporazuma.

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

3. 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. Pogodbenica ne sme neposredno ali posredno razlastiti ali nacionalizirati naložbe vlagatelja druge pogodbenice ali sprejeti nobenih ukrepov z enakovrednim učinkom (v nadaljevanju razlastitev), razen:

- a) za namen, ki je v javnem interesu,
- b) na nediskriminacijski podlagi,
- c) v skladu z zakonitim postopkom in
- d) ob plačilu takojšnjega, ustreznega in učinkovitega nadomestila v skladu z drugim in tretjim odstavkom spodaj.

2. Nadomestilo iz prvega odstavka tega člena se izračuna na podlagi poštene tržne vrednosti naložbe tik pred razlastitvijo ali preden je nameravana razlastitev postala javno znana, kar je prej. Nadomestilo se plača v prosto zamenljivi valuti brez odlašanja in vključuje obresti po komercialni stopnji, določene na tržni podlagi za valuto plačila od dneva razlastitve do dneva plačila, ter je prosto prenosljivo in dejansko unovčljivo. Ob zamudi država gostiteljica krije izgubo zaradi menjalnega tečaja, ki izhaja iz take zamude.

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 or disposal of investments in its territory by investors of the other Contracting Party.

Article 3

National and Most Favoured Nation Treatment

1. 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 with respect to the management, operation, maintenance, use, enjoyment, sale and liquidation of an investment, 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 or domestic legislation 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 the 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. A Contracting Party shall not expropriate or nationalise directly or indirectly an investment of an investor of the other Contracting Party or take any measures having equivalent effect (hereinafter referred to as expropriation) except:

- a) for a purpose which is in the public interest,
- b) on a non-discriminatory basis,
- c) in accordance with due process of law, and
- d) accompanied by payment of prompt, adequate and effective compensation in accordance with paragraphs 2 and 3 below.

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 a commercial rate established on a market basis for the currency of payment 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 host country.

3. Vlagatelj, katerega naložbe so razlaščene, ima po zakonodaji pogodbenice, ki je naložbo razlastila, pravico zahtevati, da sodni ali drug pristojni organ te pogodbenice nemudoma pregleda njegov primer in vrednotenje njegovih naložb v skladu z načeli iz tega člena.

6. člen

Nadomestilo za izgube

1. Vlagateljem ene pogodbenice, pri naložbah katerih so nastale izgube zaradi vojne ali drugega oboroženega spopada, revolucije, narodne vstaje, izrednega stanja ali kakega podobnega dogodka ali višje sile na ozemlju druge pogodbenice, ta druga pogodbenica zagotovi glede ukrepov, ki jih sprejme v zvezi s takšnimi izgubami, vključno z nadomestilom, odškodnino ali vzpostavitevjo prejšnjega stanja, nič manj ugodno obravnavo kot svojim vlagateljem ali vlagateljem katere koli tretje države.

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 in ga niso narekemale,
- druga pogodbenica v vsakem primeru zagotovi vzpostavitev prejšnjega stanja ali nadomestilo, ki je v obih primerih takojšnje, ustrezno in učinkovito, nadomestilo pa je tudi 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 in drugih prejemkov osebja iz tujine, zaposlenega v zvezi z naložbo.

2. Prenosi iz tega člena se opravijo brez omejitev ali odlašanja v prosto zamenljivi valuti po tržnem menjalnem tečaju, ki velja na datum prenosa.

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) izdajanje vrednostnih papirjev, trgovanje ali poslovanje z njimi;
- c) kazniva dejanja ali
- d) zagotavljanje spoštovanja odredb ali sodb v sodnih postopkih,

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 the 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, or force majeure, 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.

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, which was not required by the necessity of the situation,
- 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 personnel engaged from abroad 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) issuing, trading or dealing in securities;
- c) criminal or penal offences; or
- d) ensuring compliance with orders or judgements in adjudicatory proceedings;

pod pogojem, da se taki ukrepi in njihova uporaba ne uporabljajo kot sredstvo za izogibanje zavezam ali obveznostim pogodbenice po tem sporazumu.

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 terjatev vlagatelja na prvo pogodbenico ali agencijo, ki jo ta določi, in pravico prve pogodbenice ali agencije, ki jo ta določi, da na podlagi subrogacije uresničuje katero koli tako pravico in terjatev 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

Odrekanje ugodnosti

Pogodbenica lahko vlagatelju druge pogodbenice in njegovim naložbam odreče ugodnosti po tem sporazumu, če imajo vlagatelji nepogodbenice v lasti ali pod nadzorom tega vlagatelja in ta vlagatelj nima pomembnejše poslovne dejavnosti na ozemlju pogodbenice, po katere zakonu je ustanovljen ali organiziran.

11. 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 od datuma zahteve za rešitev, lahko prizadeti vlagatelj spor predloži:

- a) pristojnemu sodišču ali upravnemu sodišču pogodbenice;
- b) arbitražnemu sodišču, ki se ustanovi po:
 - i) Arbitražnih pravilih Komisije Združenih narodov za mednarodno trgovinsko pravo (UNCITRAL);
 - ii) pravilih arbitraže Mednarodne trgovinske zbornice (ICC);
 - iii) pravilih Mednarodnega centra za reševanje investicijskih sporov (ICSID), ustanovljenega na podlagi Konvencije o reševanju investicijskih sporov med državami in državljani drugih držav, ki je bila dana na voljo za podpis v Washingtonu D.C. 18. marca 1965;
- c) kateri koli drugi obliki reševanja sporov, za katero se dogovorita stranki v sporu.

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

4. Vlagatelj se lahko odloči predložiti spor v reševanje v skladu s točko b) drugega odstavka, samo dokler o isti zahtevi ni bilo odločeno na prvi stopnji v postopku v skladu s točko a) drugega odstavka.

5. Pogodbenica ne uveljavlja kot obrambo, protizahtev, pravico do pobota ali iz katerega koli drugega razloga

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.

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

Denial of Benefits

A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party and to its investments, if investors of a Non-Contracting Party own or control the first mentioned investor and that investor has no substantial business activity in the territory of the Contracting Party under whose law it is constituted or organised.

Article 11

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;
- b) an arbitral tribunal established under:
 - i) the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL);
 - ii) the rules of arbitration of the International Chamber of Commerce (ICC);
 - 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, opened for signature in Washington, D.C., on March 18, 1965;
- c) any other form of dispute settlement 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. The investor may choose to submit the dispute for resolution according to paragraph 2b only until there has been a decision concerning the same claim in the first instance in the proceedings according to paragraph 2a.

5. A Contracting Party shall not assert as a defence, counter-claim, right of set-off or for any other reason, that

tega, da je bila ali bo prejeta na podlagi jamstva, garancije ali pogodbe o zavarovanju odškodnina ali drugo nadomestilo za vso domnevno škodo ali njen del.

6. O zadevah v sporu po 9. členu se odloči, če ni drugače dogovorjeno, v skladu z zakonodajo pogodbenice, ki je stranka v sporu, vključno z njenimi kolizijskimi pravili, pravom, ki ureja dovoljenje ali pogodbo, ter ustreznimi pravili mednarodnega prava.

7. Arbitražna odločba je dokončna in zavezujoča za stranki v sporu. Vsaka pogodbenica zagotovi takojšnje in učinkovito priznanje in izvršitev arbitražnih odločb, izdanih na podlagi tega člena.

12. 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 arbitražnega sodišča. Ta dva člana nato izbereta državljana tretje države, s katero imata obe pogodbenici diplomatske odnose, ki se po odobritvi pogodbenic imenuje za predsednika arbitražnega sodišča. Predsednik 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 če iz kakršnega koli drugega razloga ne more opraviti omenjene naloge, se zaprosi podpredsednik, da opravi potrebna imenovanja. Če je podpredsednik državljan ene ali druge pogodbenice ali če iz kakršnega koli drugega razloga ne more opraviti omenjene 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 prevzameta stroške za predsednika in druge stroške v enakih delih. Glede stroškov lahko arbitražno sodišče odloči drugače.

7. Glede vseh drugih zadev arbitražno sodišče samo določi svoj poslovnik, če pogodbenici ne določita drugače.

13. 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 iz druge pogodbenice zagotavljala ugodnejšo obravnavo, kot jo predvideva ta sporazum, take določbe v obsegu, kolikor so ugodnejše, prevladajo nad tem sporazumom.

indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to an indemnity, guarantee or insurance contract.

6. Issues in dispute under Article 9 shall be decided, absent 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 authorisation or agreement and such rules of international law as may be applicable.

7. 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.

Article 12

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 Contracting Parties decide otherwise.

Article 13

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.

14. 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 naložbe, glede katerih teče postopek za reševanje sporov po Sporazumu med Socialistično federativno republiko Jugoslavijo in Republiko Avstrijo o spodbujanju in varstvu tujih vlaganj, podpisanem 25. oktobra 1989, ki se zanje še naprej uporablja, dokler spor ni rešen.

15. 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.

16. člen

Začetek veljavnosti in trajanje

1. Sporazum začne veljati prvi dan tretjega meseca po dnevu prejema zadnje diplomatske note, ki potrjuje, da sta pogodbenici izpolnili pogoje, določene z notranjo zakonodajo, za začetek veljavnosti tega sporazuma.

2. Sporazum velja deset (10) let; podaljša se za nedoločen čas in ga lahko ena ali druga pogodbenica pisno odpove po diplomatski poti z dvanajstmesečnim odpovednim rokom.

3. Za naložbe, ki so bile izvedene pred datumom prenehanja veljavnosti tega sporazuma, veljajo določbe od 1. do 15. člena še za nadaljnje obdobje desetih (10) let po datumu prenehanja veljavnosti tega sporazuma.

4. Na datum, ko začne veljati ta sporazum, preneha veljati Sporazum med Socialistično federativno republiko Jugoslavijo in Republiko Avstrijo o spodbujanju in varstvu tujih vlaganj, podpisan 25. oktobra 1989, razen za naložbe, glede katerih teče postopek za reševanje sporov, kot to določa 14. člen tega sporazuma.

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

Sestavljeno v dveh izvodih na Dunaju dne 7. marca 2001 v slovenskem, nemškem in angleškem jeziku, pri čemer so vsa besedila enako verodostojna. Pri razlikah v razlagi prevlada angleško besedilo.

Za Republiko Slovenijo:
dr. Dimitrij Rupel l. r.

Za Republiko Avstrijo:
dr. Benita Ferrero-Waldner l. r.

Article 14

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 the investments which are subject of a dispute settlement procedure under the Agreement between the Socialist Federal Republic of Yugoslavia and the Republic of Austria on the Promotion and Protection of Investments signed on 25 October 1989, which shall continue to apply to them until a settlement of the dispute is reached.

Article 15

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.

Article 16

Entry into force and Duration

1. This Agreement shall enter into force on the first day of the third month 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; it shall be extended for an indefinite period and may be denounced in writing through diplomatic channels by either Contracting Party giving twelve months' notice.

3. In respect of investments made prior to the date of termination of this Agreement the provisions of Articles 1 to 15 shall remain in force for a further period of ten (10) years from the date of termination of this Agreement.

4. On the date of entry into force of the present Agreement, the Agreement between the Socialist Federal Republic of Yugoslavia and the Republic of Austria on the Promotion and Protection of Investments signed on 25 October 1989 shall be terminated, except for investments which are subject of a dispute settlement procedure as stipulated in Article 14 of the present Agreement.

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

Done in duplicate at Vienna on 7 March 2001 in the Slovene, German and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Republic of Slovenia:
dr. Dimitrij Rupel, (s)

For the Republic of Austria:
dr. Benita Ferrero Waldner, (s)

3. člen

Za izvajanje sporazuma skrbi Ministrstvo za gospodarstvo.

4. člen

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

Št. 410-01/01-36/1

Ljubljana, dne 3. oktobra 2001

Predsednik
Državnega zbora
Republike Slovenije
Borut Pahor l. r.