

AGREEMENT
BETWEEN
THE MACEDONIAN GOVERNMENT
AND
THE ROMANIAN GOVERNMENT
ON
THE PROMOTION AND RECIPROCAL
PROTECTION OF INVESTMENTS

The Macedonian Government and the Romanian Government, hereinafter referred as "the Contracting Parties",

Desiring to intensify economic cooperation to the mutual benefit of both States,

Intending to create and maintain favorable conditions for investments by investors of the State of one Contracting Party in the State territory of the other Contracting Party,

Recognizing the need to promote and protect foreign investments with the aim to foster the economic prosperity of both States,

Have agreed as follows :

ARTICLE 1

Definitions

For the purpose of this Agreement

1. The term "investment" means any kind of asset invested by an investor of the State of one Contracting Party in the State territory of the other Contracting Party, provided that this investment is made in accordance with the laws and regulations of the State of the other Contracting Party and shall include particularly, but not exclusively :

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

b) shares, parts or any other kind of participation in companies;

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

d) copyrights, trade marks, patents or other intellectual property rights, know-how and goodwill;

e) concessions under public law, including concessions to search for, extract or exploit natural resources as well as all other rights conferred by law, by contract or by decision of the authority in accordance with the law.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment.

2. The term "investor" refers to any natural or legal person of the State of one Contracting Party that invests in the State territory of the other Contracting Party.

a) The term "natural person" refers with regard to either Contracting Party to any natural person who is a Macedonian national and respectively Romanian citizen according to the respective state legislation of that Contracting Party.

b) The term "legal person" refers with regard to either Contracting Party to any legal person including enterprises, companies, corporations, business associations and/or organizations established or organized in accordance with the respective state legislation of either Contracting Party having their seat in the State territory of that Contracting Party.

3. The term "returns" means amounts yielded by an investment and in particular, but not exclusively, includes profits, interest, dividends, capital gains, royalties and other fees .

4. The term "territory" means :

- in respect of the Macedonian Government, the territory of its State, including land, water and airspace, over which it exercises, in accordance with international law, sovereign rights and jurisdiction of such areas.

- in respect of the Romanian Government, the territory of its State, including its territorial sea and the airspace above its territory and its territorial sea over which it exercises its sovereignty, as well as the contiguous zone, continental shelf and exclusive economic zones over which exercises its jurisdiction, respectively sovereign rights, in accordance with its legislation and international law:

ARTICLE 2

Promotion and Admission of Investments

1. Each Contracting Party shall promote, in its State territory, investments made by investors of the other Contracting Party and admit such investments in accordance with its national laws and regulations.

2. When a Contracting Party shall have admitted an investment in its State territory, it shall grant in accordance with its national laws and regulations the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Contracting Party shall, whenever needed, endeavor to issue the necessary authorisations concerning the activities of consultants and other qualified persons of foreign nationality.

ARTICLE 3

Protection and Treatment of Investments

1. Each Contracting Party shall protect within its State territory, investments made in accordance with its national laws and regulations by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale and should it so happen, liquidation of such investments.
2. Each Contracting Party shall ensure fair and equitable treatment, within its State territory, of the investments of the investors of the other Contracting Party. This treatment shall not be less favorable than that granted by each Contracting Party to investments made by its own investors or by investors of a third State, if this latter treatment is more favorable.
3. The treatment of paragraphs 1 and 2 of this Article shall not apply to privileges which either Contracting Party accords to investors of a third State because of its membership in, or association with, a free trade area, customs union, common market or to an existing or future convention on the avoidance of double taxation of an convention on other fiscal matters.

ARTICLE 4

Expropriation and Compensation

1. Neither of the Contracting Parties shall take, measures of expropriation, nationalization or any other measures having the same effect (hereinafter referred to as "expropriation") against investments belonging to investors of the other Contracting Party, unless the measures are taken in the public interest, on a non-discriminatory basis and under due process of law and provided that provisions be made for effective and adequate compensation.

Such compensation shall amount to the market value of the expropriated investment immediately before the expropriation or the impending expropriation become public knowledge. The compensation for damage includes also the interest calculated on the annual LIBOR basis from the date of expropriation to the date of payment.

2. The amount of compensation shall be settled in the convertible currency and freely transferable and paid without undue delay to the person entitled thereto without regard to its residence or domicile.

A compensation shall be deemed to be made "without undue delay" if effected within such period as is normally required for the completion of transfer formalities.

The said period shall commence on the day on which the relevant request has been submitted and may not exceed three months.

3. Investors of either Contracting Party who suffer losses of their investments in the State territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favorable than that accorded to its own investors or to investors of any third State.

Resulting payments shall be transferable without delay, in the convertible and freely transferable currency.

ARTICLE 5

Transfer

1. Each Contracting Party, in whose State territory investments have been made by investors of the other Contracting Party, shall grant those investors a free transfer of the payments relating to these investments, particularly of:

a) the capital and additional sums necessary for the maintenance and development of the investment;

b), profits, interests, dividends, capital gains and other current income;

c) funds in repayment of loans including interest regularly contracted and documented and directly related to a specific investment;

d) royalties and fees;

e) the proceeds from a total or partial sale or liquidation of an investment;

f) compensation provided for in Article 4;

g) the earnings of nationals or citizens of one Contracting Party who are allowed to work in connection with an investment in the State territory of the other Contracting Party.

2. Transfers shall be effected without delay in a freely convertible currency in the normal applicable exchange rate at the date of the transfer, in accordance with the procedures established by the Contracting Party in whose State territory the investment was made, provided that all financial obligations toward this Contracting Party have been fulfilled.

3. The Contracting Parties undertake to accord to transfers referred to in paragraphs 1 and 2 of this Article a treatment no less favorable than that accorded to transfers originating from investments made by investors of any third State.

ARTICLE 6

Subrogation

1. If a Contracting Party or its designated agency makes a payment to any of its investors under a guarantee or insurance, it has contracted in respect of an investment made in the State territory of the other Contracting Party, the latter Contracting Party shall recognize the validity of the subrogation in favour of the former Contracting Party or its designated agency to any right or title held by the investor.

The Contracting Party or its designated agency that is subrogated in the rights of an investor shall be entitled to the same rights as those of the investor and to the extent that they exercise such rights they shall do so subject to the obligations of the investor pertaining to such insured investment.

The other Contracting Party shall be entitled to set off taxes and other public charges due and payable by the investor.

2. In the case of subrogation as defined in paragraph 1 above, the investor shall not pursue a claim unless authorised to do so by the Contracting Party or its designated agency thereof.

ARTICLE 7

Settlement of Disputes between one Contracting Party and an Investor of the Other Contracting Party

1. For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party, consultations will take place between the parties concerned, with a view to solving the case, as far as possible, amicably.

2. If the disputes cannot be settled amicably within six months from the date of the written notification by which the other Contracting Party has been advised about the subject of the dispute, the investor concerned may suggest, at his own choice, that the dispute be submitted to :

- the competent court of the Contracting Party in the State territory of which the investment has been made; or

- the "ad hoc" arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

- the International Centre for Settlement of Investment Disputes (ICSID), in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of the other States open for signature since 18.03.1965 in Washington DC, if both Contracting Parties have signed this Convention.

3. Once the dispute has been submitted to the competent court of the Contracting Party in whose State territory the investment was made or to international arbitration, the choice of one or the other procedure will be definitive.

4. The arbitration award shall be based on:

- the provisions of this Agreement;
- the national law of the Contracting Party in whose State territory the investment was made, including the rules relative to conflicts of law;
- the rules and the universally accepted principles of international law.

5. The arbitration decisions shall be final and binding for the parties to the dispute. Each Contracting Party undertakes to execute the decision in accordance with its national law.

ARTICLE 8

Settlement of Disputes between Contracting Parties

1. Disputes between Contracting Parties regarding the interpretation and application of the provisions of this Agreement shall be settled by consultation and negotiation through diplomatic channels.

2. If both Contracting Parties cannot reach an agreement within six months after the beginning of the dispute between themselves, the dispute shall, upon request of either Contracting Party, be submitted to an arbitration tribunal which shall be constituted as follows

Each Contracting Party shall appoint an arbitrator and these two arbitrators shall nominate a chairman who shall be a national of a third State, which maintains diplomatic relations with both Contracting Parties.

3. If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

4. If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

5. If, in the cases specified under paragraphs 3 and 4 of this Article, the President of the International Court of Justice is prevented from carrying out the said function, or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or if he is national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.

6. Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure. The tribunal shall reach its decisions by a majority of votes.

7. The decisions of the tribunal are final and binding for each Contracting Party.

8. Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation in the arbitral proceedings; the costs of the chairman and remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, decide that a higher proportion of costs shall be borne by one of the Contracting Parties and this award shall be binding on both Contracting Parties.

ARTICLE 9

More Favorable Provisions

If the domestic 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 by investors of the other Contracting Party to a treatment more favorable than is provided for by this Agreement, such regulation shall to the extent that it is more favorable prevail over this Agreement.

ARTICLE 10

Consultations and Exchange of Information

Upon request by either Contracting Party, the other Contracting Party shall agree promptly to consultations on the interpretation or application of this Agreement.

Upon request by either Contracting Party, information shall be exchanged on the impact that the national laws, regulations, decisions, administrative practices or procedures or policies of other Contracting Party may have on investments covered by this Agreement.

ARTICLE 11

Scope of Application

The present Agreement shall apply to investments in the State territory of a Contracting Party made in accordance with its national laws and regulations by investors of the other Contracting Party, whether prior to, or after the entry into force of this Agreement. However, the Agreement shall not apply to disputes that have arisen before its entry into force.

ARTICLE 12

Entry into Force

This Agreement shall enter into force on the latter date on which either Contracting Party notifies the other that its internal legal requirements for the entry into force of this Agreement have been fulfilled.

ARTICLE 13

Duration and Denunciation

1. This Agreement shall remain in force for a period of ten (10) years and shall continue in force thereafter for a similar period or periods unless, one year before the expiration of the initial or any subsequent period, either Contracting Party notifies the other Contracting Party of its intention to denounce the Agreement.

The notice of denunciation shall become effective one year after it has been received by the other Contracting Party.

2. In respect to investments made prior to the date when the notice of denunciation of this Agreement become effective, the provisions of this Agreement shall continue to be effective for a period of ten years from the date of denunciation of this Agreement.

IN WITNESS THEREOF, the Undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done in BUCHAREST on 12.06.2000 in two originals, each in Macedonian, Romanian and English languages, all texts being equally authentic. In a case of divergence of interpretation, the English text shall prevail.

FOR
THE MACEDONIAN GOVERNMENT

B. SPILKOVSKI

FOR
THE ROMANIAN GOVERNMENT

[Signature]

Член 3

Овој закон влегува во сила осмиот ден од денот на објавувањето во "Службен весник на Република Македонија"