

# AGREEMENT BETWEEN SERBIA AND MONTENEGRO AND THE STATE OF ISRAEL ON RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

Serbia and Montenegro and the State of Israel (hereinafter referred to as the "Contracting Parties"),

Desiring to deepen economic cooperation to the mutual benefit of both countries,

Intending to create favourable conditions for greater investments made by investors of one Contracting Party in the territory of the other Contracting Party, and

Recognising that the reciprocal promotion and protection of investments under the present Agreement will lead to promotion of individual business initiatives and increase prosperity in both countries,

Have agreed as follows:

## **Article 1**

### **Definitions**

For the purposes of this Agreement:

1. The term "investment" shall mean any kind of assets invested in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made, including, but not limited to:

(a) movable and immovable property and any other in rem rights;

(b) rights derived from shares, stocks, bonds and other forms of participation in companies;

(c) claims to money and any other claims having economic value;

(d) rights in the field of intellectual property, including patents, trade marks, geographical indications, industrial designs, technical processes, copyrights and related rights, unsecured business information, trade secrets, goodwill and know-how, topographies of integrated circuits and plant breeders rights;

(e) business concessions conferred by law or by virtue of a contract, including concessions to search for, cultivate, extract or exploit natural resources.

2. The Contracting Party in whose territory the investment is made shall be called the "Host Contracting Party".

3. The term "returns" shall mean the amounts yielded by an investment, including, but not limited to: dividends, profit, sums received from the total or partial liquidation of an investment, interests, capital gains, royalties and fees.

4. The provisions of this Agreement related to investments shall apply to the reinvested returns from an investment and shall have the same treatment as the original investment, if the reinvestment is made in accordance with the legislation of the Host Contracting Party. Alteration of the form of investment or alteration of the form of reinvestment shall not affect their character as investments if this alteration is made in accordance with the legislation of the Host Contracting Party.

5. The term "investor" shall mean:

(a) a natural person who is a national or a permanent resident of one Contracting Party and who is not a national of the other Contracting Party;

(b) a legal entity, including a corporation, a firm, an association or a partnership;

(1) which is registered, constituted or otherwise duly organised in accordance with the legislation of one Contracting Party, and which is investing in the territory of the other Contracting Party; or

(2) which is controlled, directly or indirectly, by persons who are nationals or permanent residents of one Contracting Party, and

(a) which has a management centre or registered office in the territory of that Contracting Party and is investing in the territory of the other Contracting Party; or

(b) which is registered, constituted or otherwise duly organised in accordance with the legislation of the Contracting Party in whose territory the investment is made.

6. The term "territory" shall mean:

(a) in respect of Serbia and Montenegro: the areas encompassed by land boundaries as well as the sea, seabed and its subsoil beyond the territorial sea, falling under the sovereign rights or jurisdiction of Serbia and Montenegro, in accordance with its national legislation and international law;

(b) in respect of the State of Israel: the territory of the State of Israel including the territorial sea, as well as the continental shelf and the exclusive economic zone over which the State of Israel exercises sovereign rights or jurisdiction in accordance with international law.

7. The term "freely usable currency" shall mean a currency which is, from time to time, established by the International Monetary Fund as freely used currency, in accordance with Articles of Agreement of the International Monetary Fund and its amendments.

## **Article 2**

### **Promotion and Protection of Investments**

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to invest capital in its territory and shall admit such investments in accordance with its laws and regulations.

2. Investments of investors of each Contracting Party shall be accorded fair and equitable treatment in accordance with the provisions of this Agreement and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investor or the other Contracting Party.

## **Article 3**

### **Treatment**

1. Neither Contracting Party shall in its territory subject investments or returns of investors of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of investors of any third State, or which, in accordance with its legislation, it accords to its own investors.

2. Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to investors of any third State, or which, in accordance with its legislation, it accords to its own investors.

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

(a) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation;

(b) any existing or future customs union, free trade area agreement or similar international agreement within the meaning of "free trade agreement" in accordance with Article XXIV of the General Agreement on Tariffs and Trade (GATT), to which either Contracting Party is or will be a party;

(c) any existing or future bilateral or multilateral agreement concerning intellectual property;

(d) any Agreement on the Reciprocal Promotion and Protection of Investments between Israel and a third State, signed before 1st July, 2003.

## **Article 4**

### **Compensation for Losses**

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or to other armed conflict, revolution, a state of national emergency, revolt, insurrection, riot or any other similar activity in the territory of the Host Contracting Party, shall be accorded by the Host Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which it accords to its own investors or to investors of any third State. Resulting payments shall be freely

transferable.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

(a) requisitioning of their property by its military or civil authorities; or

(b) destruction of their property by its forces or authorities, which was not caused in combat action or was not required by the necessity of the situation, shall be accorded restitution or adequate compensation. Resulting payments shall be freely transferable.

## **Article 5**

### **Expropriation**

1. Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation"), except for a public interest. The expropriation shall be made in accordance with the law of that Contracting Party, without any discrimination against the investor, and against prompt, adequate and effective compensation.

2. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest calculated at the applicable rate provided by the legislation of that Contracting Party until the date of payment, shall be made without delay, be effectively realisable and be freely transferable.

3. The investors affected shall have the right, under the laws of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of the legality of the expropriation and valuation of their investment, in accordance with the principles set out in this Article.

## **Article 6**

### **Repatriation of Investments and Returns**

1. Each Contracting Party shall, in respect of investments, guarantee to investors of the other Contracting Party the rights of unrestricted transfer of their investments and returns in accordance with the following terms:

(a) Transfers shall be made without delay in a freely convertible currency in which the capital was originally invested or in any other freely usable currency agreed by the investor and the Host Contracting Party; provided that the investor has complied with all fiscal and other financial obligations to Government or local authorities of that Contracting Party;

(b) Unless otherwise agreed by the investor, transfers shall be made at the rate of exchange applicable on the basis of transfer pursuant to the exchange regulations in force in the Host Contracting Party;

2. Notwithstanding the forgoing:

(a) When a Contracting Party is in serious balance of payments difficulties or in serious difficulties due to the operation of the exchange rate policy or monetary policy, or under threat thereof, that Contracting Party may, in accordance with the conditions laid down within the framework of the General Agreement on Tariffs and Trade (GATT) and Articles VIII and XIV of the Articles of Agreement of the International Monetary Fund, adopt restrictive measures which may not go beyond what is necessary to remedy the situation in a period not exceeding six months. The Contracting Party shall notify the other Contracting Party, as soon as possible, as to the measures taken, and the expected timetable for their removal;

(b) Such measures shall be equitable, non-discriminatory and carried out in good faith.

## **Article 7**

### **Exceptions**

1. Either Contracting Party may take measures strictly necessary for the maintenance or protection of its essential security interests. Such measures shall be taken and implemented in good faith and in a non-discriminatory fashion so as to minimise the deviations from the provisions of this Agreement.

2. Notwithstanding the provisions of this Agreement, with respect to intellectual property rights, the Contracting Parties may permit unauthorised use of an intellectual property right, if it is in accordance with the principles laid down in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) (1994).

## **Article 8**

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

1. Any dispute between a Contracting Party and an investor of the other Contracting Party shall be settled by negotiations.

2. If a dispute under paragraph 1 of this Article cannot be settled within six months from the written notification of this dispute, it shall, upon the request of the investor, be settled as follows:

(a) by the decision of a competent court of the Host Contracting Party; or

(b) by conciliation, or if conciliation is not chosen or if either side deems that the conciliation is unsuccessful; or

(c) by arbitration by the International Centre for the Settlement of Investment Disputes (ICSID) set up by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington, D.C., on 18th March 1965,

provided that both Contracting Parties are parties of this Convention; or

(d) by an ad hoc tribunal of arbitration, which is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within six (6) months from the date of selection of the Chairman, and the arbitral panel shall reach its written decision with explanation within two (2) months from the date of the final submissions or the date of the closing of the hearings, whichever is later.

3. Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration in accordance with the provisions of this Article. This consent and the submission of the request for arbitration by a disputing investor shall satisfy the requirements set out in:

(a) Chapter II of the ICSID Convention or the Additional Facility Rules for written consent of the parties;

(b) Article II of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 ("New York Convention"), for an agreement in writing.

4. Unless otherwise agreed, an investor who has submitted the dispute to a competent national court may have recourse to the arbitral tribunal mentioned in paragraph 2 of this Article, as long as a judgment has not been delivered on the subject matter of the dispute by a national court.

5. The award shall be final and binding. Each Contracting Party shall without delay carry out the provisions of the award and ensure enforcement of such award in its territory.

## **Article 9**

### **Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled through the diplomatic channel, which may include, if both Contracting Parties so desire, referral to a Bilateral Commission composed of representatives of both Contracting Parties or to conciliation.

2. If a dispute according to paragraph 1 of this Article cannot be settled within six (6) months from notification of this dispute, it may, upon the request of either party, be submitted to an arbitral tribunal.

3. Such arbitral tribunal shall be constituted for each case in the following way: within two (2) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. The two arbitrators shall then select a national of a third State after approval of the two Contracting Parties, and this person shall be Chairman of the tribunal. The Chairman shall be appointed within two (2) 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 Secretary General of the Permanent Court of Arbitration at the Hague (hereinafter referred to as the "PCA") to make the necessary appointments. If the Secretary General of the PCA is a national

of either Contracting Party or is otherwise prevented from discharging the said function, the Deputy Secretary General of the PCA, who is not a national of either Contracting Party, shall be invited to make the necessary appointments.

5. Unless otherwise agreed, the arbitration shall be conducted in accordance with the UNCITRAL arbitration rules. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within six (6) months, and the arbitral panel shall reach its written and reasoned decisions within two (2) months from the date of the final submissions or the date of the closing of the hearings, whichever is later.

6. The arbitral tribunal shall reach the decision by a majority of votes. This decision shall be binding on both Contracting Parties.

7. Each Contracting Party shall bear the costs of its own member of the tribunal and his participation in the arbitration proceedings. The costs of the Chairman and the other costs shall be borne in equal parts by the Contracting Parties.

## **Article 10**

### **Insurance and Guarantee Agreement**

In any proceeding, including an investment dispute, a Contracting Party shall not assert, as a defence, counterclaim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damage has been received or will be received on the basis of insurance or guarantee contract.

## **Article 11**

### **Subrogation**

1. If a Contracting Party or its designated agency (hereinafter referred to as the "First Contracting Party") makes a payment under damage insurance given in respect of an investment in the territory of the Host Contracting Party, the Host Contracting Party shall recognise.

(a) the assignment to the First Contracting Party by law or legal transaction of all rights and claims of the party indemnified; and

(b) that the First Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified and assume the obligations related to the investment.

2. The First Contracting Party shall be entitled in all circumstances to:

(a) the same treatment in respect of rights, claims and obligations acquired by virtue of subrogation; and

(b) any payments received in pursuance of those rights and claims, as the party indemnified was entitled to receive based on this Agreement in respect of the investment concerned and its related returns.

## **Article 12**

## **Application of other Provisions**

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 rules, general or particular, entitling investors or investments of investors of one Contracting Party to a treatment more favourable than is provided for by this Agreement, such rules shall, to the extent that they are more favourable, prevail over this Agreement.

## **Article 13**

### **Application of the Agreement**

The provisions of this Agreement shall apply to investments made after or prior to its entry into force, but shall not apply to an investment subject to a dispute arisen prior to entry into force of this Agreement.

## **Article 14**

### **Entry into Force**

Each Contracting Party shall notify the other Contracting Party in writing, through the diplomatic channel, of the completion of its internal legal procedure required for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter notification.

## **Article 15**

### **Duration and Termination**

This Agreement shall remain in force for a period of ten (10) years. Thereafter it shall continue in force until the expiration of twelve (12) months from the date on which either Contracting Party gave to the other, through the diplomatic channel, written notice of termination. In respect of investments made while this Agreement is in force, its provisions shall continue in force for a period of ten (10) years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

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

Done in duplicate at Belgrade, on 28th July 2004, which corresponds to 10 AV 5764, in Serbian, Hebrew and English language, all texts being equally authentic.

In the event of any divergence in interpretation, the English text shall prevail.

For Serbia and Montenegro <b>Predrag Ivanovic</b> , m. p.	For the State of Israel <b>Jafa Ben Ari</b> , m. p.
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