

AGREEMENT BETWEEN SERBIA AND MONTENEGRO AND THE REPUBLIC OF CYPRUS ON RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

Serbia and Montenegro and the Republic of Cyprus (hereinafter referred to as the "Contracting Parties"),

Desiring to create favourable conditions for greater economic cooperation between the Contracting Parties,

Intending to create and maintain favourable conditions for mutual investments,

Convinced that the promotion and protection of investments will contribute to strengthening of entrepreneurial initiatives and thus considerably contribute to development of economic relations between the Contracting Parties,

Have agreed as follows:

Article 1

Definitions

1. For the purposes of this Agreement:

The term "investment" shall mean any kind of assets invested by investor of one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations and in particular, though not exclusively, shall include:

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

b) shares, bonds and other form of securities;

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

d) intellectual property rights such as copyrights and other related rights and industrial property rights such as patents, licences, industrial designs and models, trade marks, as well as goodwill, technical processes and know-how;

e) concessions in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made, including concessions to search for, extract and exploit 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 not contrary with the laws and regulations of the Contracting Party in whose territory the investment is made.

2. The term "returns" shall mean the amounts yielded by an investment and shall include in particular, though not exclusively: profit, capital gains, dividends, interests, royalties, fees for

patents and licences, as well as other similar fees.

3. The term "investor" shall mean:

a) a natural person having the nationality of one Contracting Party and investing in the territory of the other Contracting Party,

b) a legal entity incorporated, constituted or otherwise duly organised according to the laws and regulations of one Contracting Party having its seat in the territory of that same Contracting Party and investing in the territory of the other Contracting Party.

4. The term "territory" shall mean the areas encompassed by land boundaries as well as the sea, seabed and its subsoil beyond the territorial sea over which the Contracting Party has sovereign rights or jurisdiction in accordance with its laws and regulations and international law.

Article 2

Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create stable, equal, favourable and transparent 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 at any time be accorded fair and equitable treatment and enjoy full protection and security in the territory of the other Contracting Party.

Article 3

National Treatment and Most Favoured Nation Treatment

1. Each Contracting Party shall accord, in its territory, to investments made by investors of the other Contracting Party treatment no less favourable than that which it accords to the investments made by its own investors or by investors of any third State, whichever is more favourable to the investor.

2. Each Contracting Party shall accord, in its territory, to investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable to the investor.

3. The provisions of paragraphs 1 and 2 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 resulting from:

a) its membership in any existing or future customs union, economic union, monetary union or

any regional organisation for economic cooperation, and

b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic law relating wholly or mainly to taxation.

4. The treatment to which paragraphs 1 and 2 of this Article refer to shall be accorded on the basis of reciprocity.

5. Nothing in this Agreement shall prevent any Contracting Party from applying the new measures, adopted under some form of regional cooperation referred to in paragraph 3 (a) of this Article, replacing the measures previously applied by that Contracting Party.

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, a state of emergency, revolt, insurrection or riot in the territory of the other Contracting Party, shall be accorded by the other Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the other Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be made without undue delay and shall be freely transferable.

2. Without prejudice to provisions of 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 authorities of the other Contracting Party, or

b) destruction of their property by authorities of the other Contracting Party, 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 made without undue delay and 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 expropriation or nationalisation (hereinafter referred to as "expropriation"), except in cases when such measures are taken in public interest. The expropriation shall be made with due process of law, on a non-discriminatory basis and against adequate compensation made without undue delay. 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 on the basis of six month LIBOR until the date of payment, shall be made without undue delay and be freely transferable.

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

Article 6

Transfers

1. Each Contracting Party shall, after payment of all fiscal and other financial obligations of investors of the other Contracting Party, guarantee to investors of the other Contracting Party the free transfer of all payments related to their investment, and in particular, though not exclusively:

- a) capital and additional amounts to maintain or increase investments;
- b) returns;
- c) funds from repayment of loans;
- d) proceeds from the sale or liquidation of the investment;
- e) royalties and other fees;
- f) unspent earnings of employees of a Contracting Party working in relation to investments in the territory of one Contracting Party, according to the procedure stipulated by national legislation;
- g) compensation paid under Articles 4 and 5 of this Agreement;

2. Transfers under paragraph 1 of this Article shall be made without undue delay, in a freely convertible currency, at the official rate of exchange applicable on the date of transfer in the territory of the Contracting Party where the investment is made.

Article 7

Subrogation

1. If one Contracting Party or its designated institution makes a payment to its own investors under a guarantee approved for investment in the territory of the other Contracting Party, the other Contracting Party shall recognise.

- a) the assignment under law or in accordance with the legal transaction of any right or claim of the investor of the first Contracting Party or its designated institution, and
- b) that the first Contracting Party or its designated institution is entitled to exercise rights and enforce such claims of investors by virtue of subrogation, and assume the obligations related to the investment.

2. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

3. Subrogation of rights and obligations of the insured investor shall also apply to transfer of payment made in accordance with Article 6 of this Agreement.

Article 8

Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, to the fullest extent possible, be settled by negotiations between the Contracting Parties.

2. If a dispute between the Contracting Parties cannot be settled in this way within six months from the date of starting the negotiations, it shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal.

3. The arbitral tribunal referred to in paragraph 2 of this Article shall be constituted on an ad hoc basis, for each case, in the following way: within three months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Within two months, these two members shall select the third member of the tribunal - a national of a third State with which both Contracting Parties have diplomatic relations, who, with the approval of the two Contracting Parties, shall be appointed as Chairman of the arbitral tribunal.

4. If within the periods specified in paragraph 3 of this Article the arbitral tribunal has not been constituted, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the 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 if he too is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach decisions on the basis of the provisions of this Agreement, as well as the generally accepted principles and rules of international law. The arbitral tribunal shall reach decisions by a majority of votes. These decisions shall be final and binding on both Contracting Parties. The tribunal shall lay down its own work procedure.

6. 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 9

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

1. Disputes between one Contracting Party and an investor of the other Contracting Party in relation to an investment for the purpose of this Agreement, shall be submitted in written form, with all detailed information, by the investor of the other Contracting Party. Where possible, the parties shall endeavour to settle these disputes amicably.

2. If these disputes cannot be settled by negotiations within six months from the written notification under paragraph 1 of this Article, they may be submitted, by the choice of the investor, to:

- a competent court of the Contracting Party in whose territory the investment is made;
- an ad hoc tribunal of arbitration, in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);

- arbitration court of the International Chamber of Commerce in Paris; or
- 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, from 18th March 1965.

3. In case the investor decides to initiate the dispute before an international arbitration, each Contracting Party shall agree in advance that such dispute may be initiated before an international arbitration.

4. The award shall be final and binding on both parties to the dispute and shall be executed in accordance with the provisions of this Agreement as well as the principles of international law. The arbitration award shall be final and binding on both parties to the dispute. Each Contracting Party shall, without delay, forward any such award and shall execute it in accordance with national legislation.

5. During the arbitration proceedings or legal validity of the award, neither Contracting Party shall put forward the objection that the investor of the other Party has received compensation according to insurance contract in relation to the entire or partial damage.

Article 10

Application of other Provisions

If the laws of the Contracting Parties, or existing or future international agreements between the Contracting Parties, or other international agreements to which the Contracting Parties are parties, contain provisions entitling investments of investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such laws and agreements shall, to the extent that they are more favourable, prevail over this Agreement.

Article 11

Consultations

Representatives of the Contracting Parties shall hold consultations, when necessary, in relation to the issues referring to application of this Agreement. Consultations shall be held at the proposal of one Contracting Party in place and time that shall be agreed through the diplomatic channel.

Article 12

Application of the Agreement

This provisions of this Agreement shall relate to investments made by investors of one Contracting Party prior to and after entry into force of this Agreement, but shall apply only to cases arisen after entry into force of this Agreement.

Article 13

Essential Security Interests

Nothing in this Agreement shall be done so as to prevent any of the Contracting Parties to take measures for fulfilling obligations in relation to preservation of international peace and security.

Article 14

Entry into Force, Duration and Termination of the Agreement

1. This Agreement shall enter into force on the day of receipt of the latter of the two written notifications by which the Contracting Parties shall notify each other on fulfilment of their constitutional formalities required for entry into force of international agreements. It shall continue in force within the first period of 10 (ten) years and shall be tacitly extended in successive periods of two years.

2. This Agreement shall not exclude in advance the right of any Contracting Party to request termination of the Agreement, in its entirety or partly, at any time during its validity period.

3. In such case, if the Contracting Parties fail to reach agreement on any amendment or termination of this Agreement within 6 (six) months following the written request for amendment or termination of one Contracting Party submitted to the other Party, the Party which has submitted such request shall have the right to cancel the entire Agreement within 30 (thirty) days following the expiration of 6 (six) months. Such cancellation shall be done through the diplomatic channel and shall be considered a notification on termination of the Agreement. In that case, the Agreement shall cease to be valid within 6 (six) months following the receipt of such notification by the other Contracting Party, unless that notification is withdrawn by a mutual agreement before the expiration of this period.

4. In respect of investments made prior to the date of termination of this Agreement, the provisions of all Articles of this Agreement shall remain in force for a period of the following 10 years from that date.

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

Done in duplicate at Nicosia, on 21st July 2005, in Serbian, Greek 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
Vuk Draskovic, m. p.

For
the Republic of Cyprus
George Jackobu, m. p.

