

**AGREEMENT**

between

THE GOVERNMENT OF THE REPUBLIC OF MACEDONIA

and

THE FEDERAL GOVERNMENT OF

THE FEDERAL REPUBLIC OF YUGOSLAVIA

**ON RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Republic of Macedonia and the Federal Government of the Federal Republic of Yugoslavia (hereinafter referred to as "the Contracting Parties"),

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

Desiring to create and maintain favourable conditions for reciprocal investments,

Convinced that the promotion and protection of investments will contribute to the enhancement of entrepreneurial initiative and thereby significantly contribute to the development of economic relations between the Contracting Parties,

Have agreed as follows:

**Article 1****Definition****1. For the purposes of this Agreement:**

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

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

(b) shares in and stock and debentures as well as other kinds of securities of a company and any other form of participation in a company;

(c) claims to money or any other claim under contract having an economic value;

(d) intellectual property rights, such as copyrights and other neighboring rights and industrial property rights, such as patents, licenses, industrial designs or 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 the territory whereof the investment is being made, including concessions to explore, extract and exploit natural resources.

A change in the form in which assets are invested shall not affect their character as investments.

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

(a) a natural person having the nationality of one Contracting Party and making investments in the territory of the other Contracting Party.

(b) a legal entity incorporated, constituted or otherwise duly organized in accordance with the laws and regulations of one Contracting Party, having its headquarters in the territory of that Contracting Party and making investments in the territory of the other Contracting Party.

3. The term "returns" shall mean the amounts yielded by an investment and in particular, though not exclusively, includes: profit, capital gains, dividends, reinvested capital, interests, royalties, patent and license fees and other similar fees.

4. The term "territory" shall mean:

(a) in case of the Republic of Macedonia: the territory of the Republic of Macedonia, including land, water surface and air space, over which it exercises, in accordance with its laws and regulations and international law, sovereign rights and jurisdiction.

(b) in case of the Federal Republic of Yugoslavia: the territory of the Federal Republic of Yugoslavia, including the area encompassed by land boundaries as well as the sea, seabed and its subsoil beyond the territorial sea over which the Contracting Party exercises, in accordance with its national laws and regulations and international law, sovereign rights and jurisdiction;

## Article 2

### Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Party to make investments in its territory, and shall admit such investments subject to its laws and regulations.

2. Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall 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 ensure fair and equitable treatment, within its territory, of the investments of the investors of the other Contracting Party. This treatment shall not be less favourable than that granted by each Contracting Party to investments made by its own investors or by investors of a third State.

2. Each Contracting Party shall in its territory accord 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.

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 which the former Contracting Party may grant to:

(a) a customs union, free trade zone, monetary union or similar international agreement establishing such unions or other forms of regional cooperation to which either of the Contracting Parties is or may become a party, or

(b) any international agreement or arrangement relating wholly or partially to taxation.

### Article 4

#### Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards, restitution, indemnification, compensation or other settlement, no less favourable than that which the latter 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.

### Article 5

#### Expropriation

Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except in the public interest. The expropriation shall be carried out under due process of law, on a non-discriminatory basis and against adequate compensation which shall be effected

without undue delay. Such compensation shall correspond 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 annual LIBOR basis until the date of payment, shall be made without undue delay, not later than 3 months and be freely transferable.

#### Article 6 Transfers

1. Each Contracting Party shall, upon payment of all fiscal and other financial obligations of investors of the other Contracting Party, guarantee to the investors of the other Contracting Party, in accordance with the laws and regulations of the first Contracting Party, free transfers of payments related to their investments including in particular, though not exclusively:

- (a) capital and additional amounts to maintain or increase investments;
- (b) returns in conformity with Article 1 of the Agreement;
- (c) funds from repayment of loans and credits;
- (d) proceeds of total or partial sale or liquidation of investment;
- (e) compensation paid pursuant to Articles 4,5 and 7 of this

Agreement.

2. Transfers of payments referred to in paragraph 1 of this Article shall be made without undue delay, in convertible currency, at the official exchange rate applicable on the date of transfer in the territory of the Contracting Party where the investment has been made.

#### Article 7 Subrogation

1. If one Contracting Party or its authorized agency makes a payment to its own investors under a guarantee given in respect of an investment in the territory of the other Contracting Party, the other Contracting Party shall recognize:

(a) the assignment to the first Contracting Party or its authorized agency by law or by legal transacting of any rights and claims of the indemnified investor, and

(b) that the first Contracting Party or its authorized agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, and shall assume obligations pertaining to the investment.

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

3. Subrogation of the rights and obligations of the indemnified investor shall also apply to the transfer of payments effected in accordance with Article 6. of this Agreement.

### Article 8

#### Settlement of Disputes between the Contracting Parties

1. Disputes arising between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled, as far as possible, through negotiation.

2. If a dispute between the Contracting Parties cannot thus be settled within six months from the date of the commencement of negotiations, it shall, upon the request of either Contracting Party be referred to an arbitration tribunal.

3. The arbitration tribunal referred to in paragraph 2. of this Article shall be constituted on an ad hoc basis for each individual case in the following way: within three months of receipt of the request for arbitration each Contracting Party shall appoint one arbitrator. Within two months these two arbitrators shall select the third arbitrator - a third country national who on approval by the Contracting Parties, shall be appointed as Chairman of the arbitration tribunal.

4. If the arbitration tribunal is not set up within the periods specified in paragraph 3. of this Article, 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 if he 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 arbitration tribunal shall reach its decision on the basis of the provisions of this Agreement as well as of the generally accepted principles and rules of international law. The arbitration tribunal shall decide by a majority vote. Its awards shall be final and binding on both Contracting Parties. The tribunal shall establish its own procedure.

6. Each Contracting Party shall bear the expenses of its own arbitrator and of his participation in the arbitration proceedings. The costs of the Chairman and the remaining costs expenses 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 an investor of one Contracting Party and the other Contracting Party concerning the obligations of the latter arising from this Agreement in relation to an investment made by the investor of the first Contracting Party, shall be settled, as far as possible through negotiations.

2. If the dispute referred to in paragraph 1 of this Article cannot be settled by negotiations within six months from the date of receipt of written notice that dispute occurred, either party to the dispute may submit the dispute for settlement to a competent court of the Contracting Party which is a party to the dispute.

3. Instead of resorting to the provisions of paragraph 2 of this Article, either party to the dispute may choose to submit the dispute for settlement through arbitration to:

(a) an ad hoc arbitral tribunal according to the Arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL);

(b) the International Center for the Settlement of Investment Disputes, in the event that both Contracting Parties are parties to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature in Washington on 18 March 1965 (ICSID Convention).

4. The award shall be final and binding on both parties to the dispute and shall be enforced in accordance with the laws and regulations of the Contracting Party in which territory the investment has been made.

#### Article 10

##### Application of other Provisions

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

#### Article 11

##### Consultations

Representatives of the Contracting Parties shall hold consultations, when necessary, concerning matters related to the application of the present Agreement. These consultations shall be made on suggestion of either Contracting Party, at the time and place to be agreed upon through diplomatic channels.

#### Article 12

##### Application of the Agreement

The present Agreement shall apply to investments in the territory of a Contracting Party made in accordance with its laws and regulations by investors of the other Contracting Party on the date of entering into force of this Agreement.

#### Article 13

##### Entry into Force, Duration and Termination of the Agreement

1. The present Agreement is subject to ratification and shall enter into force on the date of the exchange of instruments of ratification.

2. This Agreement is concluded for a period of ten years and shall thereafter be automatically extended for successive periods of ten years unless either Contracting Party notifies in writing, at least twelve months prior to its date of expiry, to the other Contracting Party its decision to terminate the present Agreement.

3. With respect to investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 12 shall remain in force for a further period of ten years from that date.

IN WITNESS WHEREOF the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done in Skopje on 4 th September 1996 in two originals in the Macedonian, Serbian and English languages, each text being equally authentic. In case of divergency of interpretation the English text shall prevail.

FOR THE GOVERNMENT OF THE  
REPUBLIC OF MACEDONIA

**Ph.D. Taki Fiti c.p.**

FOR THE GOVERNMENT OF THE -  
FEDERAL REPUBLIC OF  
YUGOSLAVIA

**Gorge Shiradovik c.p.**

Член 3

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