

**A G R E E M E N T**

**B E T W E E N**

**T H E M A C E D O N I A N G O V E R N M E N T**

**A N D**

**T H E S P A N I S H G O V E R N M E N T**

**O N**

**T H E P R O M O T I O N A N D R E C I P R O C A L**  
**P R O T E C T I O N O F I N V E S T M E N T S**

## Preamble

THE MACEDONIAN GOVERNMENT AND THE SPANISH GOVERNMENT, hereinafter referred to as the "Contracting Parties",

Desiring to intensify economic co-operation between both countries,

Intending to create favorable conditions for investments made by investors of each Contracting Party in the territory of the other Contracting Party,

and

Recognizing that the promotion and protection of investments under this Agreement will stimulate initiatives in this field,

Have agreed as follows:

## ARTICLE 1 DEFINITIONS

For the purpose of this Agreement

1. The term "investor" means any natural or legal person of either Contracting Party who makes investments in the territory of the other Contracting Party.

a) The term "natural person" means physical persons who, according to the law of that Contracting Party, are considered to be its nationals.

b) The term "legal person" means juridical persons or any other legal entity constituted or otherwise duly organized under the applicable law of that Contracting Party and having its seat in the territory of that same Contracting Party.

2. The term "investment" means every kind of asset invested by an investors of one Contracting Party, in the territory of the other Contracting Party in accordance with the

laws and regulations of the latter Contracting Party and in particular, though not exclusively, includes:

- a) movable and immovable property and any other property rights, such as mortgages, liens, pledges and similar rights;
- b) shares in, stocks or any other kind of participation in companies;
- c) claims to money or to any performance having an economic value;
- d) intellectual or industrial property rights such as copyrights, trade marks, patents, technical processes; know-how and goodwill;
- e) any rights conferred by law or under contract including concessions to search for, cultivate, extract or exploit natural resources.

Investments made in the territory of one Contracting Party by any legal person of that same Contracting Party which is actually owned or controlled by investors of the other Contracting Party shall likewise be considered as investments of investors of the latter Contracting Party if they have been made in accordance with the laws and regulations of the former Contracting Party.

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

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

4. The term "territory" means:

a) in respect of the Macedonian Party, the land, water and airspace, over which the Macedonian Party exercises, in accordance with international law, sovereign rights and jurisdiction of such areas.

b) in respect of the Spanish Party, the land territory, internal waters, territorial sea and the airspace above them, as well as the exclusive economic zone and the continental shelf that extend outside the limits of the territorial sea over which the Spanish Party exercises or may exercise jurisdiction and/or sovereign rights in accordance with international law.

**ARTICLE 2**  
**PROMOTION AND ADMISSION OF INVESTMENTS**

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

2. When a Contracting Party shall have admitted an investment in its territory, it shall, in accordance with its laws and regulations, grant 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 endeavor to issue the necessary authorizations concerning the activities of consultants and other qualified persons of foreign nationality.

**ARTICLE 3**  
**PROTECTION**

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security. In no case shall a Contracting Party accord to such investments treatment less favorable than that required by international law.

2. Each Contracting Party shall protect, within its territory, investments made in accordance with its 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. Each Contracting Party shall observe any obligation it may have entered into writing with regard to investments of investors of the other Contracting Party.

**ARTICLE 4**  
**NATIONAL TREATMENT AND MOST FAVORED NATION**  
**TREATMENT**

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

2. Each Contracting Party shall accord, in its territory, to investors of the other Contracting Party, as regards their management, 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 concerned.

3. The treatment granted under 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 and their investments the benefit of any treatment, preference or privilege resulting from:

- a) its membership of, or association with, any existing or future free trade area, customs, economic or monetary union or other similar international agreements including other forms of regional economic organisation, or
- b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

**ARTICLE 5**  
**EXPROPRIATION**

1. Neither of the Contracting Parties shall take measures of expropriation, nationalization or any other measure having the same effect against investments of investors of the other Contracting Party (hereinafter "expropriation"), unless the measures are taken in the public interest, on a non-discriminatory basis and under due process of law and

provided that such measures be accompanied by payment of prompt, effective and adequate compensation.

Such compensation shall amount to the market value of the expropriated investment immediately before the expropriation or before the impending expropriation became public knowledge, whichever is earlier (hereinafter referred to as the evaluation date). The compensation includes also the interest calculated at a normal commercial rate from the date of expropriation to the date of payment.

2. The amount of compensation shall be settled in a freely convertible currency at the market rate of exchange prevailing for that currency on the evaluation date, shall be paid without delay to the person entitled without regard to its residence or domicile and be freely transferable within such period as normally required for the completion or transfer formalities.

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

3. The investor affected shall have the right, under the law of the Contracting Party making the expropriation, to prompt review, by judicial authority or other competent authority of that Contracting Party, of its case, including the valuation of its investment and the payment of compensation, in accordance with the principles set out in this Article.

4. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of this Article are applied so as to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

**ARTICLE 6**  
**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 national emergency, revolution, insurrection, civil disturbance or any other similar event, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other settlement, treatment no less favorable than that which the latter Contracting Party accords to its own investors or to investors of any third State whichever is more favourable to the investor concerned. Resulting payments shall be freely transferable.

2. Notwithstanding paragraph 1 an investor of one Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in the territory of the other Contracting Party resulting from:

- a) requisitioning of its investment or part thereof by the latter's forces or authorities; or
- b) destruction of its investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

shall be accorded by the latter Contracting Party restitution or compensation which in either case shall be prompt, adequate and effective. Resulting payments shall be made without delay and be freely transferable.

**ARTICLE 7**  
**TRANSFER**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of all payments relating to their investments. Such transfers shall include, in particular, though not exclusively:

- a) the initial capital and additional amounts to maintain or increase the investment;
- b) profits, interest, dividends, royalties, any fees and capital gains;

- c) funds in repayment of loans related to an investment;
- d) compensations provided for under Articles 5 and 6;
- e) proceeds from the total or partial sale or liquidation of an investment;
- f) earnings and other remuneration of personnel engaged from abroad in connection with an investment;
- g) payments arising out of the settlement of a dispute.

2. Transfers shall be effected without delay in a freely convertible currency in the normal applicable exchange rate at the date of the transfer. Transfers shall be made in compliance with the tax obligations laid down by the law in force of the host Contracting Party.

3. The Contracting Parties undertake to grant 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 any third State.

## **ARTICLE 8**

### **APPLICATION OF OTHER PROVISIONS**

1. If the legislation 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 that provided for by this Agreement, such regulation shall, to the extent that it is more favorable, prevail over this Agreement.

2. More favorable terms than those of this Agreement which have been agreed to by one of the Contracting Parties with investors of the other Contracting Party shall not be affected by this Agreement.

3. Nothing in this Agreement shall affect the provisions established by international Agreements relating to the intellectual and industrial property rights in force at the date of its signature.



## **ARTICLE 9**

### **SUBROGATION**

If a Contracting Party or its designated Agency makes a payment to any of its investors under an indemnity, guarantee or contract of insurance against non-commercial risks given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment of any right or claim of such investor to the former Contracting Party or its designated Agency 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. This subrogation will make it possible for the former Contracting Party or its designated Agency to be the direct beneficiary of any payment for indemnification or other compensation to which the investor could be entitled.

## **ARTICLE 10**

### **SETTLEMENT OF DISPUTES BETWEEN CONTRACTING PARTIES**

1. Disputes between both Contracting Parties regarding the interpretation or 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 by means of diplomatic negotiations, the latter shall, upon request of either Contracting Party, be submitted to an arbitral 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 Party has not appointed its arbitrator and has not followed 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. The arbitral tribunal shall decide on the basis of the provisions of this Agreement as well as the generally accepted principles of international law.

9. 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 11**  
**SETTLEMENT OF DISPUTES BETWEEN A**  
**CONTRACTING PARTY AND AN INVESTOR OF THE**  
**OTHER CONTRACTING PARTY**

1. Disputes between one of the Contracting Parties and an investor of the other Contracting Party shall be notified in writing, including detailed information, by the investor to the host Contracting Party of the investment. Any dispute between a Contracting Party and an investor of the other Contracting Party should be settled by means of a friendly agreement.
2. If the dispute 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 submit, at his own choice, the dispute - to:
  - the competent court of the Contracting Party in the territory of which the investment was made;
  - the "ad hoc" court of arbitration established under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law (UNCITRAL);
  - the International Center for Settlement of Investment Disputes (ICSID), in accordance with the "Convention on Settlement of Investment Disputes between States and Nationals of other States, open for signature since 18.03.1965 in Washington DC, if both Contracting Parties signed this Convention;
3. Once the dispute has been submitted to the competent tribunal of the Contracting Party 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 territory the investment was made, including the rules relative to conflicts of law, and 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 decisions in accordance with its national law.

**ARTICLE 12**  
**CONSULTATIONS AND EXCHANGE OF INFORMATION**

1. Either Contracting Party may propose the other Contracting Party consultations be held on any matter concerning the interpretation or application of this Agreement. The other Contracting Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.
  
2. Upon request by either Contracting Party, information should be exchanged on the laws, regulations, decisions, administrative practices, procedures or policies of the other Contracting Party.

**ARTICLE 13**  
**SCOPE OF APPLICATION**

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 whether prior or after the date of entering into force of this Agreement. However, the Agreement shall not apply to disputes that have arisen before its entry into force.

**ARTICLE 14**  
**ENTRY INTO FORCE, DURATION AND TERMINATION**

1. 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.

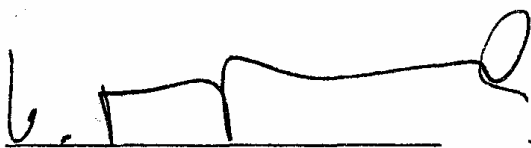
2. This Agreement shall remain in force for an initial period of ten years. After the expiration of the initial period of ten years, it shall continue in force indefinitely unless either Contracting Party notifies the other Contracting Party in writing of its decision to denounce the Agreement. The notice of denunciation shall become effective one year after it has been received by the other Contracting Party.

3. With respect to investments made prior to the date when 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 whereof, the duly authorized representatives of the Contracting Parties sign this Agreement.

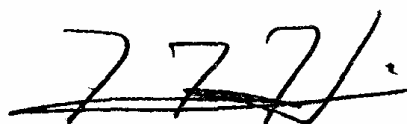
Done in duplicate at *Madrid* on *June 20, 2005* in Macedonian, Spanish and English languages, all texts being equally authentic. In a case of divergence of interpretation, the English text shall prevail.

**FOR THE  
MACEDONIAN  
GOVERNMENT**



**D-r Ilinka Mitreva  
MINISTER OF FOREIGN  
AFFAIRS**

**FOR THE SPANISH  
GOVERNMENT**



**Miguel Ángel Moratinos Cuyaubé  
MINISTER OF FOREIGN  
AFFAIRS AND COOPERATION**

Член 3

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