

Agreement between Serbia and Montenegro and the Republic of Cyprus In Relation to Mutual Stimulation and Protection of Investments

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

Anxious to create favourable conditions for the enlargement of economic cooperation between the Parties to the Agreement,

Desirous of creating and maintaining favourable conditions for mutual investments,

Convinced that stimulation and protection of investments shall contribute to strengthening entrepreneurial initiatives and thereby considerably contribute to the development of economic relations between the Parties to the Agreement,

Have agreed as follows:

Article 1

Definitions

1. For the purpose of this Agreement:

The expression "investment" shall stand for each form of funds the investor of one Party invests in the territory of the other Party to the Agreement, in conformity with its laws and regulations and shall comprise especially but not exclusively:

- (a) movable and real estate property and all other property in rem rights such as mortgage, pledge and guarantee;
- (b) shares, bonds and other kinds of securities;
- (c) financial claims or any other claims according to an agreement having economic value;
- (d) intellectual property rights such as copyrights and other related rights and industrial property rights, such as patents, licences, industrial design and models, trademarks, as well as good-will, technical processes and know-how;
- (e) concessions in conformity with laws and regulations of the Party to the Agreement in whose territory the investment is made, including concessions for researches, mine-working and exploitation of natural resources.

Change of form in which the investments are invested or re-invested shall not have an influence on their character as an investment, provided that such a change is not contrary to laws and regulations of the Party to the Agreement in whose territory the investments are made.

2. The expression "returns" shall stand for the amounts brought by an investment and shall comprise especially but not exclusively: profit, capital gain, dividends, interests, author's royalties, patent and licence compensations, as well as other similar compensations.

3. The expression "investor" shall stand for:

- (a) a natural person having citizenship of one of the Parties to the Agreement and investing in the territory of the other Party to the Agreement,
- (b) a legal entity established, founded or in any other way properly organized in conformity with laws and regulations of one Party to the Agreement, having a head office in the territory of that Party to the Agreement and investing in the territory of the other Party to the Agreement.

4. The expression "territory" shall stand for the areas enclosed by terrestrial borders as well as the sea area, seabed and its underground out of the terrestrial sea in which the Party to the Agreement has sovereign rights or jurisdiction in conformity with its laws and regulations and international law.

Article 2

Stimulation and protection of investments

1. Each Party to the Agreement shall stimulate and create stable,

Jurisdiction

- › Serbia
- › Montenegro
- › Cyprus

Legis in effect

- › 23 December 2005

Legislation date

- › 21 July 2005

Topics

- › Investment Arbitration

Source

- › **Agreement between Serbia and Montenegro and the Republic of Cyprus In Relation to Mutual Stimulation and Protection of Investments**, Supplied by the Research Staff at the Penn State Institute of Arbitration,

equal, favorable and transparent conditions for the investors of the other Party to the Agreement in order to make investments in its territory and approve such investments in conformity to its laws and regulations.

2. Investments of the investors of each Party to the Agreement shall enjoy at any time equitable and fair treatment, full protection and security in the territory of the other Party to the Agreement.

Article 3

National treatment and the most favourable nation treatment

1. Each Party to the Agreement shall provide in its territory the investments of the other Party to the Agreement a treatment no less favourable than the one provided to the investments of its own investors or the investments of the third countries' investors, depending on which one is more favourable for the investor.

2. Each Party to the Agreement shall provide in its territory the investors of the other Party, with regard to management, maintenance, exploitation, enjoyment or disposal of their investments, a treatment no less favourable than the one provided to its own investors or to the third countries' investors, depending on which one is more favourable for the investor.

3. Provisions of paragraph 1 and 2 of this Article shall not be interpreted so to oblige one Party to the Agreement to give the investors of the other Party any preference in treatment, preferentials or privileges arising from:

- (a) its membership in any existing or forthcoming customs union, economic union, monetary union or any other regional organization for economic cooperation, and
- (b) any international agreement or arrangement referring in its entirety or partly to taxation or any national law referring in its entirety or partly to taxation.

4. A treatment, paragraphs 1 and 2 of this Article referring to, shall be provided on the basis of reciprocity.

5. No part of this Agreement shall prevent any of the Parties to the Agreement to apply new measures adopted within any of the forms of regional cooperation, mentioned in paragraph 3(a) of this Article replacing the measures previously applied by that Party.

Article 4

Retrieval of losses

1. The investors of the Party to the Agreement whose investments have suffered losses in the territory of the other Party to the Agreement, as a consequence of war or any other armed conflict, state of emergency, rebellion, uprising or riots in the territory of the other Party to the Agreement, shall be provided by it, with regard to returns, indemnification, compensation or any other retrieval of losses, a treatment no less favourable than the one the other Party to the Agreement gives to its own investors or any third country's investors. Payments based on that grounds shall be made with no unnecessary delay and shall be freely transferable.

2. Without prejudging provisions of paragraph 1 of this Article, the investors of the Party to the Agreement suffering losses in any of the situations quoted in that paragraph, in the territory of the other Party, as a consequence of:

- (a) confiscation of their property by the authorities of the other Party to the Agreement, or
- (b) destructions of their property by the authorities of the other Party to the Agreement which did not arise in combative operations or were not necessary due to a situation,

shall be approved a return of funds or an adequate compensation. Payments on the quoted grounds shall be made with no unnecessary delay and shall be freely transferable.

Article 5

Expropriation

1. Investments of the investors of any Party to the Agreement shall not be nationalized, expropriated, or subjected to measures by effect equal to nationalization or expropriation (hereinafter referred to as: expropriation) in the territory of the other Party to the Agreement, except when such measures are taken in public interest. Expropriation shall be executed with enforcement of law, on non-discriminatory basis, and shall be adequately compensated with

no unnecessary delay. Such a compensation shall be equal to the market value amount of the expropriated investment, immediately prior to expropriation or before the forthcoming expropriation becomes widely known fact, depending on what happens first, and shall include the interest calculated on the grounds of six month LIBOR until the payment date and shall be paid with no unnecessary delay and freely transferable.

2. The investor suffering a damage shall be entitled, in conformity with laws and regulations of the Party to the Agreement performing expropriation, to require from a judicial or any other independent body of that Party to the Agreement to make with no delay a consideration of his/her case and evaluation of his/her investment in accordance with principles defined in this Article.

Article 6

Transfers

1. Each Party to the Agreement, upon payment of all fiscal and other financial obligations of the investors of the other Party to the Agreement, shall guarantee the investors of the other Party a free transfer of payments referring to their investments, and especially but not exclusively:

- (a) capital and additional amounts for maintenance or enlargement of investments;
- (b) returns;
- (c) funds from loan discharges;
- (d) incomes from sale and liquidation of investments;
- (e) author's royalties and other compensations;
- (f) unexpended salaries of the employees of one Party to the Agreement working in relation to investments in the territory of one Party to the Agreement, according to the procedure regulated by national legislation;
- (g) compensations paid for the purpose of Article 4 and 5 of the Agreement.

2. Transfers from paragraph 1 of this Article shall be performed with no unnecessary delay in freely convertible currency, according to the official exchange rate applicable on the transfer day in the territory of the Party to the Agreement where the transfer is realized.

Article 7

Subrogation

1. If a Party to the Agreement, or its appointed institution, makes payment to its own investors according to a guarantee approved for the investment in the territory of the other Party to the Agreement, the other Party to the Agreement shall recognize:

- (a) assignment according to law or in conformity with legal transaction of any right or claim of the investor of the former Party to the Agreement or its appointed institution, and
- (b) that the former Party to the Agreement, or its appointed institution according to subrogation, shall be empowered to realize the rights and claims of the investor and shall take obligations referring to the investments.

2. Subrogated rights or claims shall not exceed prime rights or claims of the investor.

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

Article 8

Settlement of disputes between the Parties to the Agreement

1. Disputes of the Parties to the Agreement in relation to interpretation or application of this Agreement shall be settled, to the utmost extent, through negotiations between the Parties to the Agreement.

2. If a dispute between the Parties to the Agreement fails to be settled in that manner within six months from the beginning of negotiations, it shall be submitted, at the request of one Party to the Agreement, to an arbitration court.

3. Arbitration Court from paragraph 2 of this Article shall be constituted, on ad hoc basis, for each individual case, as follows: within three months following the reception of an arbitration request, each Party to the Agreement shall appoint one member to the court.

Those two members shall select the third member to the court – a citizen of a third country both Parties to the Agreement having diplomatic relations with, who shall be, with consent of both Parties to the Agreement, appointed the president of the arbitration court.

4. If the arbitration court fails to be constituted within terms defined in paragraph 3 of this Article, both of the Parties to the Agreement may request the president of the International Court of Justice, in absence of any other agreement, to perform the necessary appointment. If the president is a citizen of any of the Parties to the Agreement, or in any other way unable to perform that function, the vice president shall be required to perform the necessary appointment. If the vice president is also a citizen of any of the Parties to the Agreement, or also unable to perform that function, a member of the International Court of Justice subsequent according to seniority being not a citizen of any of the Parties to the Agreement shall be asked to perform the necessary appointments.

5. Arbitration court shall make decisions pursuant to provisions of this Agreement, as well as widely accepted principles and rules of the international law. Arbitration court shall make decisions by majority of vote. Those decisions shall be final and binding for both Parties to the Agreement. The court shall establish its own work procedure.

6. Each Party to the Agreement shall bear costs of its member to the court and his/her participation in arbitration procedures. The costs of the president and other costs shall be equally at the expense of both Parties to the Agreement.

Article 9

Settlement of disputes between one Party to the Agreement and an investor of the other Party to the Agreement

1. Disputes between one Party to the Agreement and an investor of the other Party to the Agreement, in relation to an investment for the purpose of this Agreement, shall be submitted, in written, with all detailed information, by the investor of the latter Party to the Agreement. Where possible, the Parties shall endeavour to settle those disputes in a friendly manner.

2. If those disputes fail to be settled through negotiations within six months following the day of a written notice from paragraph 1 of this Article, they may be submitted, by the choice of the investor, to:

- competent court of the Party to the Agreement in whose territory the investment is made;
- ad hoc arbitration court in accordance with Arbitration rules of the UN Commission for the International Trade Law (UNCITRAL);
- arbitration court of the International Chamber of Economy in Paris;
- or
- The International Centre for settlement of investment disputes (ICSID) founded in accordance with the Convention for settlement of investment disputes between countries and the other countries' citizens, of 18 March 1965.

3. In case the investor decides to institute a dispute with an international arbitration, each Party to the Agreement shall agree in advance that such a dispute may be instituted with an international arbitration.

4. The judgment shall be final and binding for both Parties in the dispute and shall be implemented in accordance with provisions of this Agreement, as well as the international law principles. The judgment of the arbitration court shall be final and binding for both parties in dispute. Each Party to the Agreement shall hand over each judgment of that type and shall implement it in conformity with national legislation.

5. During the arbitration proceedings or legal validity of judgment, no Party to the Agreement shall put forward the objection that the investor of the other Party has received any compensation according to insurance agreement in relation to the entire or partial damage.

Article 10

Application of other provisions

If the laws of the Parties to the Agreement, and current and future international agreements between the Parties to the Agreement or other international agreements, whose signatories are the Parties to the Agreement, consist of provisions by which investments of other Party's investors are given a treatment more favourable than the treatment provided by this Agreement, such laws and agreements shall, to the extent they are more favourable in, prevail over this

agreement.

Article 11

Consultations

Representatives of the Parties to the Agreement shall hold consultations, when necessary, in relation to the issues referring to application of this agreement.

Consultations shall be held, at the suggestion of one Party to the Agreement, in place and at time agreed through diplomatic channels.

Article 12

Application of the Agreement

Provisions of this Agreement shall refer to the investments the investor of one Party has realized before as well as after entry into force of this Agreement, but shall apply exclusively to cases arisen after the entry into force of this Agreement.

Article 13

Essential security interests

No segment of this Agreement shall be done so to prevent any of the Parties to the Agreement to take measures for fulfilling obligations in relation to preservation of the international peace and security.

Article 14

Entry into force, continuation and expiration of the Agreement

1. This Agreement shall enter into force on the day of reception of the latter of the two written notices by means of which the Parties to the Agreement informing each other on fulfilment of their constitutional formalities necessary for entry into force of international agreements. It shall stay in force within the first period of 10 (ten) years and shall be tacitly extended in successive two-year periods.

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

3. In such a case, if the Parties to the Agreement fail to agree upon any change or expiration of this Agreement, within 6 (six) months following the written request for the change or expiration of one Party to the Agreement, submitted to the other Party, the Party having submitted such a request shall have right to cancel the entire Agreement within 30 (thirty) days following the expiration of 6 (six) month period. Such a cancellation shall be done through diplomatic channels and shall be considered a notice on cancellation of the Agreement validity. In that case, the Agreement shall cease to be in effect within 6 (six) months following the reception of such a notice by the other Party to the Agreement, unless that notice is withdrawn by a mutual agreement before the expiration of that period.

4. Where the investments are realized before the completion period of this Agreement, provisions of all Articles shall be applicable further on within the period of the next 10 years following that date.

As ratification to the abovementioned, the undersigned persons, properly authorized by their governments, signed this Agreement.

Done in Nicosia, on the day of 21 July 2005 in two originals, in Serbian, Greek and English, where all texts shall be equally authentic. In case of any discrepancy in interpretation, the text in English shall prevail.

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