

Agreement on encouragement and reciprocal protection of Investments between the Government of the Kingdom of the Netherlands and the Macedonian Government

The Government of the Kingdom of the Netherlands and The Macedonian Government

(their States hereinafter referred to as 'the Contracting States'),

Desiring to strengthen their traditional ties of friendship and to extend and intensify the economic relations between them, particularly with respect to investments by the nationals of one Contracting State in the territory of the other Contracting State,

Recognising that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital and technology and the economic development of the Contracting States and that fair and equitable treatment of investment is desirable,

Have agreed as follows:

Article 1

For the purposes of this Agreement:

- (a) the term "investments" means every kind of asset and more particularly, though not exclusively:
 - (i) movable and immovable property as well as any other rights in rem in respect of every kind of asset;
 - (ii) rights derived from shares, bonds and other kinds of interests in companies and joint ventures;
 - (iii) claims to money, to other assets or to any performance having an economic value;
 - (iv) rights in the field of intellectual property, technical processes, goodwill and know-how;
 - (v) rights granted under public law or under contract, including rights to prospect, explore, extract and win natural resources.
- (b) the term "nationals" comprises with regard to either Contracting State:
 - (i) natural persons having the nationality of that Contracting State;
 - (ii) legal persons constituted under the law of that Contracting State;
 - (iii) legal persons not constituted under the law of that Contracting State but controlled, directly or indirectly, by natural persons as defined in (i) or by legal persons as defined in (ii).
- (c) the territory of the Contracting States comprises respectively:
 - (i) the Netherlands territory, including any area adjacent to the territorial sea within which the Netherlands Contracting State, in accordance with international law, exercises jurisdiction or sovereign rights with respect to the sea bed, its sub-soil and its superjacent waters, and their natural resources;
 - (ii) the Macedonian territory, meaning areas in land, water and air, over which the Macedonian Contracting State exercises sovereign rights and jurisdiction according to international law.
- (d) the term 'returns' shall mean money yielded by an investment and in particular, though not exclusively the profit, the interest, the dividends, compensation with respect to licenses, as well as other similar compensation.

Article 2

Either Contracting State shall, within the framework of its laws and regulations, promote economic cooperation through the protection in its territory of investments of nationals of the other Contracting State. Subject to its right to exercise powers conferred by its laws or regulations, each Contracting State shall admit such investments.

Jurisdiction

- › Netherlands
- › Macedonia

Legis in effect

- › 1 June 1999

Legislation date

- › 7 July 1998

Topics

- › Investment Arbitration

Source

- › **Agreement on encouragement and reciprocal protection of Investments between the Government of the Kingdom of the Netherlands and the Macedonian Government**, Supplied by the Research Staff at the Penn State Institute of Arbitration,

Article 3

- 1) Each Contracting State shall ensure fair and equitable treatment of the investments of nationals of the other Contracting State and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those nationals. Each Contracting State shall accord to such investments full physical security and protection.
- 2) More particularly, each Contracting State shall accord to such investments treatment which in any case shall not be less favourable than that accorded either to investments of its own nationals or to investments of nationals of any third State, whichever is more favourable to the national concerned.
- 3) If a Contracting State has accorded special advantages to nationals of any third State by virtue of agreements establishing customs unions, economic unions, monetary unions or similar institutions, or on the basis of interim agreements leading to such unions or institutions, that Contracting State shall not be obliged to accord such advantages to nationals of the other Contracting State.
- 4) Each Contracting State shall observe any obligation it may have entered into with regard to investments of nationals of the other Contracting State.
- 5) If the provisions of law of either Contracting State or obligations under international law existing at present or established hereafter between the Contracting States in addition to the present Agreement contain a regulation, whether general or specific, entitling investments by nationals of the other Contracting State to a treatment more favourable than is provided for by the present Agreement, such regulation shall, to the extent that it is more favourable, prevail over the present Agreement.

Article 4

With respect to taxes, fees, charges and to fiscal deductions and exemptions, each Contracting State shall accord to nationals of the other Contracting State who are engaged in any economic activity in its territory, treatment not less favourable than that accorded to its own nationals or to those of any third State who are in the same circumstances, whichever is more favourable to the nationals concerned. For this purpose, however, there shall not be taken into account any special fiscal advantages accorded by that State:

- a) under an agreement for the avoidance of double taxation; or
- b) by virtue of its participation in a customs union, economic union or similar institution; or
- c) on the basis of reciprocity with a third State.

Article 5

The Contracting States shall guarantee that payments relating to an investment may be transferred. The transfers shall be made in a freely convertible currency, without restriction or delay. Such transfers include in particular though not exclusively:

- a) profits, interests, dividends and other current income;
- b) funds necessary
 - (i) for the acquisition of raw or auxiliary materials, semi-fabricated or finished products,
- or
- (ii) to replace capital assets in order to safeguard the continuity of an investment;
- c) additional funds necessary for the development of an investment;
- d) funds in repayment of loans;
- e) royalties or fees;
- f) earnings of natural persons;
- g) proceeds of sale or liquidation of the investment;
- h) compensation in case of expropriation pursuant to Article 6.
- i) payments arising under article 7.

Article 6

Neither Contracting State shall take any measures depriving, directly or indirectly, nationals of the other Contracting State of their investments unless the following conditions are complied with:

- a) the measures are taken in the public interest and under due process of law;

- b) the measures are not discriminatory or contrary to any undertaking which the Contracting State which takes such measures may have given;
- c) the measures are taken against just compensation. Such compensation shall represent the genuine value of the investments affected, shall include interest at a normal commercial rate until the date of payment and shall, in order to be effective for the claimants, be paid and made transferable, without delay, to the country designated by the claimants concerned and in the currency of the country of which the claimants are nationals or in any freely convertible currency accepted by the claimants.

Article 7

Nationals of the one Contracting State who suffer losses in respect of their investments in the territory of the other Contracting State owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot shall be accorded by the latter Contracting State treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which that Contracting State accords to its own nationals or to nationals of any third State, whichever is more favourable to the nationals concerned.

Article 8

If the investments of a national of the one Contracting State are insured against noncommercial risks or otherwise give rise to payment of indemnification in respect of such investments under a system established by law, regulation or government contract, any subrogation of the insurer or re-insurer or Agency designated by the one Contracting State to the rights of the said national pursuant to the terms of such insurance or under any other indemnity given shall be recognised by the other Contracting State.

Article 9

Each Contracting State hereby consents to submit any legal dispute arising between that Contracting State and a national of the other Contracting State concerning an investment of that national in the territory of the former Contracting State to the International Centre for Settlement of Investment Disputes for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965. A legal person which is a national of one Contracting State and which before such a dispute arises is controlled by nationals of the other Contracting State shall, in accordance with Article 25 (2) (b) of the Convention, for the purpose of the Convention be treated as a national of the other Contracting State.

Article 10

The provisions of this Agreement shall, from the date of entry into force thereof, also apply to investments which have been made before that date. The provisions of this Agreement shall not apply to disputes concerning investments which are subject of a dispute settlement procedure under the Agreement on the Protection of Investments between the Socialist Federal Republic of Yugoslavia and the Kingdom of the Netherlands of 16 February 1976. In that case the latter Agreement shall continue to apply to these investments, as far as it concerns the disputes referred to, until a final settlement for these disputes has been reached.

Article 11

Either Contracting State may propose the other State that consultations be held on any matter concerning the interpretation or application of the Agreement. The other State shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

Article 12

- 1) Any dispute between the Contracting States concerning the interpretation or application of the present Agreement, which cannot be settled within a reasonable lapse of time by means of diplomatic negotiations, shall, unless the States have otherwise agreed, be submitted, at the request of either State, to an arbitral tribunal, composed of three members. Each State shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman who is not a national of either State.
- 2) If one of the States fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other State to make such appointment, the latter State may invite

the President of the International Court of Justice to make the necessary appointment.

3) If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either State may invite the President of the International Court of Justice to make the necessary appointment.

4) If, in the cases provided for in the paragraphs (2) and (3) of this Article, the President of the International Court of Justice is prevented from discharging the said function or is a national of either Contracting State, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either State the most senior member of the Court available who is not a national of either State shall be invited to make the necessary appointments.

5) The tribunal shall decide on the basis of respect for the law. Before the tribunal decides, it may at any stage of the proceedings propose to the States that the dispute be settled amicably. The foregoing provisions shall not prejudice settlement of the dispute *ex aequo et bono* if the States so agree.

6) Unless the States decide otherwise, the tribunal shall determine its own procedure.

7) The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the States.

Article 13

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the part of the Kingdom in Europe, the Netherlands Antilles and to Aruba, unless the notification provided for in Article 14, paragraph (1) provides otherwise.

Article 14

1) The present Agreement shall enter into force on the first day of the second month following the date on which the Contracting States have notified each other in writing that their constitutionally required procedures have been complied with, and shall remain in force for a period of fifteen years.

2) Unless notice of termination has been given by either Contracting State at least six months before the date of the expiry of its validity, the present Agreement shall be extended tacitly for periods of ten years, whereby each Contracting State reserves the right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.

3) In respect of investments made before the date of the termination of the present Agreement, the foregoing Articles shall continue to be effective for a further period of fifteen years from that date.

4) Subject to the period mentioned in paragraph (2) of this Article, the Kingdom of the Netherlands shall be entitled to terminate the application of the present Agreement separately in respect of any of the parts of the Kingdom.

5) Upon entry into force of the present Agreement, the Agreement on the Protection of Investments between the Kingdom of the Netherlands and the Socialist Federal Republic of Yugoslavia, signed on 16 February 1976, shall be terminated in the relation between the Contracting States, and replaced by the present Agreement, except for the purpose of settlement of existing disputes as referred to in Article 10 of the present Agreement.

The present Agreement will only terminate the Agreement on the Protection of Investments between the Kingdom of the Netherlands and the Socialist Federal Republic of Yugoslavia, signed on 16 February 1976, in relation with those parts of the Kingdom of the Netherlands to which the present Agreement applies in conformity with the notification mentioned in article 14 (1) of this Agreement.

IN WITNESS WHEREOF, the undersigned representatives, duly authorised thereto, have signed the present Agreement.

DONE in two originals, at on....., in the Netherlands, Macedonian and English languages, the three texts being authentic. In case of difference of interpretation the English text will prevail.

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