

## [TRANSLATION — TRADUCTION]

AGREEMENT<sup>1</sup> BETWEEN THE REPUBLIC OF AUSTRIA AND THE  
REPUBLIC OF ALBANIA CONCERNING THE PROMOTION  
AND PROTECTION OF INVESTMENTS

The Republic of Austria and the Republic of Albania, hereinafter referred to as the “Contracting Parties”,

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

Recognizing that the promotion and protection of investments can enhance the willingness to undertake such investments and thereby make an important contribution to the development of economic relations,

Have agreed as follows:

*Article 1*

## DEFINITIONS

For the purposes of this Agreement:

- (1) “Investment” shall mean all assets, in particular, but not exclusively:
  - (a) Ownership of movable and immovable property and other rights *in rem*, such as mortgages, rights of retention, pledges, rights of usufruct, and similar rights;
  - (b) Shareholding rights and other types of interests in undertakings;
  - (c) Claims to money provided in order to create economic value or claims to services that have economic value;
  - (d) Copyrights, industrial property rights such as inventor’s patents, trademarks and industrial designs and models, registered designs, technical processes, know-how, trade names and goodwill;
  - (e) Concessions under public law to prospect for, mine or extract natural resources;
- (2) “Investor” shall mean, in the case of the Contracting Parties:
  - (a) Any individual who is a citizen of one of the Contracting Parties and makes an investment in the territory of the other Contracting Party;
  - (b) Any body corporate or commercial partnership which is constituted in accordance with the laws of one of the Contracting Parties, has its headquarters in the territory of that Party and makes an investment in the territory of the other Contracting Party;
- (3) “Earnings” shall mean the amounts derived from an investment, including in particular, but not exclusively, profits, interest, capital gains, dividends, directors’ percentages of profits, royalties and other compensation;

<sup>1</sup> Came into force on 1 August 1995, i.e., the first day of the third month following the month of the exchange of the instruments of ratification, which took place at Tirana on 2 May 1995, in accordance with article 11 (1).

(4) "Expropriation" shall also include nationalization or any other measure with the same effect.

### *Article 2*

#### PROMOTION AND PROTECTION OF INVESTMENTS

(1) Each Contracting Party shall to the extent possible promote investments made in its territory by investors from the other Contracting Party, shall permit such investments in accordance with its laws and shall accord them just and equal treatment.

(2) Investments as referred to in paragraph 1 and the earnings therefrom shall be accorded the full protection of this Agreement. The same shall also apply, without prejudice to the provisions of paragraph 1, to reinvestment, including reinvestment of earnings. Any legal extension, modification or conversion of an investment shall be considered as a new investment.

### *Article 3*

#### TREATMENT OF INVESTMENTS

(1) Each Contracting Party shall accord investors of the other Contracting Party and their investments treatment no less favourable than that accorded to its own investors or investors of a third State and their investments.

(2) The provisions of paragraph 1 may not be interpreted in such a way as to oblige one of the Contracting Parties to accord to investors of the other Contracting Party and their investments any present or future advantages of treatment, preference or privilege resulting from:

- (a) A customs union, a common market, a free-trade zone or membership in an economic community;
- (b) An international convention, an inter-State agreement or domestic legislation on tax matters;
- (c) An arrangement to facilitate frontier traffic.

### *Article 4*

#### COMPENSATION

(1) Investments by investors from one Contracting Party may be expropriated in the territory of the other Contracting Party only in the public interest, on the basis of lawful procedure and against compensation. Compensation must correspond to the value of the investment immediately prior to the time at which the actual or impending expropriation became public knowledge. Compensation must be provided without undue delay and, until it is paid, shall earn interest at the customary bank rate of interest in the State in whose territory the investment was made; it must be paid in a freely convertible currency and freely transferable. Suitable provision shall be made no later than the date of expropriation for determining and paying compensation.

(2) If a Contracting Party expropriates the property of a company which is considered to be a company of that Contracting Party according to article 1, paragraph 2, of this Agreement and in which an investor of the other Contracting Party owns shares, the first Contracting Party shall apply the provisions of paragraph 1 of this article in such a way as to ensure that that investor receives appropriate compensation.

(3) The investor shall have the right to have the legality of the expropriation reviewed by the competent authorities of the Contracting Party which has instituted the expropriation.

(4) The investor shall have the right to have the amount of compensation and the arrangements for paying it reviewed by the competent authorities of the Contracting Party which has instituted the expropriation or by an international arbitral tribunal in accordance with article 8 of this Agreement.

### *Article 5*

#### REMITTANCES

(1) Each Contracting Party shall guarantee to investors of the other Contracting Party free transfer without unreasonable delay in freely convertible currency of payments in connection with an investment, particularly, but not exclusively:

- (a) Capital and additional payments to maintain or increase the investment;
- (b) Payments intended to cover expenditures related to the management of an investment;
- (c) Earnings;
- (d) Loan repayments;
- (e) Proceeds from the complete or partial liquidation or sale of an investment;
- (f) Compensation in accordance with article 4, paragraph 1, of this Agreement.

(2) Remittances in accordance with this article shall be at the rates of exchange in effect on the day of the transfer payment in the territory of the Contracting Party from which the transfer is made.

(3) The exchange rates shall be determined by the banking system in the territory of each of the Contracting Parties. The bank charges shall be fair and reasonable.

### *Article 6*

#### SUBROGATION

If a Contracting Party, or an institution authorized by it for that purpose, make payments to its own investor on the basis of a guarantee on an investment in the territory of the other Contracting Party, the other Contracting Party shall, without prejudice to the rights of the investor of the first-mentioned Contracting Party under article 8 of this Agreement and the rights of the first-mentioned Contracting Party under article 9 of the Agreement, recognize the transfer of all rights or claims of the investor to the first-mentioned Contracting Party by operation of the law or on the

basis of a legal transaction. Furthermore, the other Contracting Party shall recognize the subrogation by the first-mentioned Contracting Party of all such rights or claims, to which the first-mentioned Contracting Party shall be entitled to the same extent as its legal predecessor. Articles 4 and 5 of this Agreement shall apply *mutatis mutandis* to the transfer of payments to be made to the Contracting Party in question on the basis of the transferred rights.

#### Article 7

##### OTHER OBLIGATIONS

(1) If the legislation of either Contracting Party or present or future mutual international obligations of the two Contracting Parties additional to this Agreement should give rise to a general or specific agreement which accords to the investments of investors from the other Contracting Party more favourable treatment than is provided for by this Agreement, such arrangement shall have precedence over this Agreement, insofar as it is more favourable.

(2) Each Contracting Party shall comply with any obligation that it may have entered into with respect to investors from the other Contracting Party concerning investments which it has authorized in its territory.

#### Article 8

##### SETTLEMENT OF INVESTMENT DISPUTES

(1) If disputes should arise between one Contracting Party and an investor from the other Contracting Party with regard to an investment, such disputes shall be resolved amicably between the parties themselves if possible.

(2) If such a dispute cannot be settled within three months from written notification of adequately specified claims in accordance with paragraph 1, it shall, at the request of the Contracting Party or of the investor from the other Contracting Party, be submitted for composition or arbitration to the International Centre for Settlement of Investment Disputes, which was established in Washington on 18 March 1965 with the signing of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965.<sup>1</sup> In the event of arbitration, each of the Contracting Parties, by becoming a signatory to this Agreement, consents irrevocably and in advance, even if there should be no individual arbitration agreement between a Contracting Party and an investor, to submit such disputes to the Centre and to recognize the arbitration judgement as binding. Such consent entails waiving the requirement that all domestic administrative or legal procedures should be exhausted.

(3) The decision of the arbitral tribunal shall be final and binding; it shall be enforced by domestic law; and each Contracting Party shall ensure the recognition and enforcement of the arbitral award in accordance with its own laws.

(4) A Contracting Party which is a party to the dispute may not at any stage of the arbitral proceedings or the enforcement of the arbitral award raise the objection that the investor who is the other party to the dispute has received compensation for some or all of his losses on the basis of a guarantee.

<sup>1</sup> United Nations, *Treaty Series*, vol. 575, p. 159.

### Article 9

#### DISPUTES BETWEEN CONTRACTING PARTIES

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled amicably by negotiation.

(2) If a dispute within the meaning of paragraph 1 cannot be settled within six months, it shall be submitted to an arbitral tribunal at the request of either of the two Contracting Parties.

(3) The arbitral tribunal shall be constituted on an *ad hoc* basis; each Contracting Party shall appoint one arbitrator, and the two arbitrators shall agree on a third person to act as chairman. The arbitrators shall be appointed within two months from the date on which one Contracting Party has informed the other that it wishes to submit the dispute to an arbitral tribunal, and the chairman shall be appointed within a further two months.

(4) If the time-limits specified in paragraph 3 are not met, either Contracting Party may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of one of the two Contracting Parties or is unable to carry out this function for any other reason, the Vice-President or, if he is unable to act, the most senior member of the International Court of Justice may under the same conditions be asked to make the appointments.

(5) The arbitral tribunal shall determine its own procedure.

(6) The arbitral tribunal shall base its decision on this Agreement and on generally recognized rules of international law. It shall decide by majority vote; its decision shall be final and binding.

(7) Each Contracting Party shall bear the cost of its own arbitrator and of its representation in the arbitration proceedings. The cost of the chairman and the other costs shall be shared equally by the two Contracting Parties. The tribunal, however, may make a different ruling on costs in its decision.

### Article 10

#### APPLICATION OF THIS AGREEMENT

This Agreement shall be applicable to investments that investors of one Contracting Party have made or will make in accordance with the laws of the other Contracting Party in the territory of that Contracting Party both before and after the entry into force of this Agreement.

### Article 11

#### ENTRY INTO FORCE AND DURATION

(1) This Agreement is subject to ratification, and shall enter into force on the first day of the third month following the month in which the instruments of ratification have been exchanged.

(2) The Agreement shall remain in force 10 years; upon the expiry of that period, it shall be extended for an indefinite period of time and may be denounced by either Contracting Party subject to 12 months' prior notice in writing through the diplomatic channel.

(3) In the case of investments made prior to the expiry of this Agreement, articles 1 to 10 of this Agreement shall apply for a further 10 years from the date of expiry.

DONE at Vienna on 18 March 1993, in two original copies, each in the German and Albanian languages, both texts being equally authentic.

For the Republic  
of Austria:

MOCK

For the Republic  
of Albania:

SERREQI

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