

30 Annex - External relations

248. DECREE PROMULGATING THE LAW ON RATIFICATION OF THE AGREEMENT BETWEEN THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA AND THE GOVERNMENT OF THE REPUBLIC OF POLAND IN RELATION TO MUTUAL STIMULATION AND PROTECTION OF INVESTMENTS

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48.

Pursuant to Article 96 item 2 of the Constitution of the Federal Republic of Yugoslavia, I hereby issue

DECREE

**PROMULGATING THE LAW ON RATIFICATION OF THE AGREEMENT BETWEEN THE
FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA AND THE
GOVERNMENT OF THE REPUBLIC OF POLAND IN RELATION TO MUTUAL STIMULATION
AND PROTECTION OF INVESTMENTS**

I hereby promulgate the Law on ratification of the Agreement between the Federal Government of the Federal Republic of Yugoslavia and the Government of the Republic of Poland in relation to mutual stimulation and protection of investments, adopted by the Federal Assembly in the session of the Council of Citizens of 27 December 1996, and in the session of the Council of Republics of 27 December 1996.

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No 5	President of
27 December 1996	The Federal Republic of Yugoslavia
Belgrade	Zoran Lilic, m. p.

LAW

ON RATIFICATION OF THE AGREEMENT BETWEEN THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA AND THE GOVERNMENT OF THE REPUBLIC OF POLAND IN RELATION TO MUTUAL STIMULATION AND PROTECTION OF INVESTMENTS

Article 1

I hereby ratify the Agreement between the Federal Government of the Federal Republic of Yugoslavia and the Government of the Republic of Poland in relation to mutual stimulation and protection of investments, signed on 3 September 1996, in Belgrade, in the original in Serbian, Polish and English.

Article 2

The Agreement text in the original in Serbian reads:

AGREEMENT

BETWEEN THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA AND THE REPUBLIC OF POLAND IN RELATION TO MUTUAL STIMULATION AND PROTECTION OF INVESTMENTS

The Federal Government of the Federal Republic of Yugoslavia and the Government of the Republic of Poland (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 favourable conditions for mutual investments,

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

Have agreed as follows:

Article 1

Definitions

For the purpose of this Agreement:

1. The expression "investments" shall stand for each type of funds invested by the investor of one Party to the Agreement in the territory of the other Party to the Agreement, in conformity with its laws and regulations and shall comprise especially, although not exclusively:

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- (a) movable and real estate property and all other property rights in rem, such as mortgage, pledge and guarantee;
- (b) stocks, shares, bonds as well as other types of securities and shares in companies;
- (c) financial claims or any other claims on the grounds of agreements 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 approved in conformity with laws and regulation of the Party to the Agreement in whose territory the investments are made, including concessions for researches, extraction and exploitation of natural resources.

Any change of form, within which the investments are made, shall not influence their character as investments.

- 2. The expression "returns" shall stand for the amounts brought by investments, and shall comprise especially, although 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) natural person having citizenship of one Party to the Agreement and investing in the territory of the other Party to the Agreement;
 - (b) legal entity established, founded or in any other way legitimately 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 territorial sea to which the Party to the Agreement has sovereign rights or jurisdiction in conformity with its laws and regulations and the international law

Article 2

Stimulation and protection of investments

- 1. Each Party to the Agreement shall stimulate and create favourable conditions for the investors of the other Party to the Agreement to make investments in its territory and approve such investments in conformity with its laws and regulations.
- 2. The investments of the investors of any of the Parties 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.

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Article 3

National treatment and the most favoured nation treatment

1. Each Party to the Agreement, in its territory, shall provide 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 what is more favourable.
2. Each Party to the Agreement, in its territory, shall provide the investors of the other Party to the Agreement, with regard to management, maintenance, exploitation, enjoyment or disposal over their investments, a treatment no less favourable than one provided to its own investors or the investors of the third countries, depending on what is more favourable.
3. Provisions of paragraph 1 and 2 of this Article shall not be interpreted so to oblige one of the Parties to the Agreement to give the investors of the other Party to the Agreement any preference in treatment, preferentials or privileges the former Party to the Agreement may approve to the investors of the third country, on the grounds of its membership in:
 - (a) customs union, free trade zone, monetary union or any similar international agreement founding such unions or other forms of regional cooperation, whose signatory any of the Parties to the Agreement is or may become, or due to
 - (b) any existing or future international agreement or arrangement referring in its entirety or partly to taxation.

Article 4

Retrieval of losses

1. The investors of the Party to the Agreement whose investments, in the territory of the other Party to the Agreement, have suffered losses, due to 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, with regard to returns, reimbursement, compensation or any other form of loss retrieval, a treatment no less favourable than the one the other Party to the Agreement provides to its own investors or the investors of any third country.
2. Without prejudging provisions of paragraph 1 of this Article, the investors of the Party having suffered losses in the territory of the other Party to the Agreement, in any of the situations mentioned in that paragraph, as a consequence of:
 - (a) confiscation of their property by the authorities of the other Party to the Agreement, or
 - (b) destruction 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 situation, shall be approved return of funds, or a corresponding compensation. Payments on the quoted grounds shall be made with no unnecessary delay and shall be freely transferable.

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Article 5

Expropriation

1. The investments of the investors of any Party to the Agreement shall not be nationalized, expropriated, or subjected to measures by effect equal to expropriation or nationalization (hereinafter referred to as: "expropriation") in the territory of the other Party to the Agreement, except in public interest. Expropriation shall be conducted with enforcement of law, on non-discriminatory basis, along with an adequate compensation, which shall be effected with no unnecessary delay. Such a compensation shall correspond to the market value of the investment expropriated, immediately prior to expropriation or before the forthcoming expropriation becomes widely known fact, depending on what happens first, it shall include the interest calculated according to LIBOR, until the payment date, and it shall be paid with no unnecessary delay and freely transferable.
2. The investor suffering losses shall be entitled, in conformity with the laws and regulations of the Party to the Agreement having conducted the expropriation, to require from a judicial or any other independent body of that Party to the Agreement to perform an urgent consideration of his/her case and evaluation of his/her investment, in accordance with the principles stipulated in this Article.

Article 6

Transfers

1. Each Party to the Agreement, upon payment of all fiscal and other obligations of the investors of the other Party to the Agreement, shall guarantee the investors of the other Party 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 discharge;
 - (d) incomes from sale and liquidation of investments;
 - (e) amounts paid for the purpose of Articles 4, 5 and 7 of this 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 authorized institution, makes payment to its own investors according to a guarantee approved for the investment in the

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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 authorized institution, as well as
 - (b) that the former Party to the Agreement, or its authorized institution, according to subrogation, shall be empowered to realize the rights or claims of the investor and shall take over the 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 performed 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, 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.

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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 a Party to the Agreement and an investor of the other Party to the Agreement

1. Disputes between an investor of one Party to the Agreement and the other Party to the Agreement, in relation to obligations of the other Party to the Agreement, pursuant to this Agreement, in relation to the investments of the investor of the former Party to the Agreement, shall be settled, to the utmost extent, through negotiations.
2. If the disputes quoted in paragraph 1 of this Article fail to be settled through negotiations, within six months, both of the parties in dispute shall be entitled to submit the request for settlement to a competent court of the Party to the Agreement being a party in dispute.
3. Instead of applying provisions of paragraph 2 of this Agreement each of the parties in dispute may forward the dispute to an arbitration settlement to:
 - (a) an ad hoc arbitration court pursuant to Arbitration rules of the UN Commission for the International Trade Law (UNCITRAL), or
 - (b) International Centre for settlement of investment disputes, in case that both Parties to the Agreement are signatories of the Convention on settlement of investment disputes between countries and other countries' citizens, opened for signing in Washington, on 18 March 1965 (Convention ICSID).
4. The judgment shall be final and binding for both parties in dispute and shall be implemented in conformity with laws and regulations of the Party to the Agreement in whose territory the investment has been realized.

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.

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Consultation 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

Provision of this Agreement shall refer to the investments that the investors of one Party to the Agreement have realized before as well as after entry into force of this Agreement, where it shall apply from the moment of its entry into force.

Article 13

Entry into force, continuation and expiration of this Agreement

1. This Agreement shall be subjected to ratification and shall enter into force on the day of receiving the last notice in which one Party to the Agreement informs the other Party to the Agreement on fulfillment of internal legal procedure for entry into force of this Agreement.
2. This Agreement shall be concluded for the period of ten years and shall automatically continue to be in force in successive five year periods, unless one Party to the Agreement informs in written the other Party to the Agreement, at least 12 (twelve) months before the expiration, on its intention to terminate the Agreement.
3. Where the investments are realized before the completion period of this Agreement, provisions of Articles 1 to 12 shall be applicable further on within the period of the next 10 years following that date.

As a ratification of the abovementioned, the undersigned persons, properly empowered by their Governments, signed this Agreement.

Done in Belgrade, on the day of 3 September 1996, in two originals in Serbian, Polish and English, where all texts shall be equally authentic. In case of any discrepancy in interpretation, the English language shall prevail.

For the Federal Government of
The Federal Republic of Yugoslavia,
Milan Milutinovic, m. p.
For the Government of
The Republic of Poland,
Darijus Rosati, m. p.

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Article 3

This law shall enter into force on the eighth day following that of its publication in the Official Gazette of Serbia and Montenegro – International Agreements.