

30 Annex - External relations

252. 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 INDIA IN RELATION TO MUTUAL STIMULATION AND PROTECTION OF INVESTMENTS

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75.

Pursuant to Article 26 item 7 of the Constitutional Charter of The state union of Serbia and Montenegro, I hereby issue the

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 INDIA 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 India in relation to mutual stimulation and protection of investments, adopted by the Assembly of Serbia and Montenegro, in the session of 22 December 2004.

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INVESTMENTS

No 142

President

22 December 2004

Of Serbia and Montenegro

Belgrade

Svetozar Marovic, 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 INDIA IN RELATION TO MUTUAL
STIMULATION AND PROTECTION OF INVESTMENTS**

Article 1

This is to ratify the Agreement between the Federal Government of the Federal Republic of Yugoslavia and the Government of the Republic of India in relation to mutual stimulation and protection of investments, signed on 31 January 2003 in Belgrade, in the originals in Serbian, Hindi and English.

Article 2

The Agreement text in the original in Serbian reads as follows:

AGREEMENT

**BETWEEN THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF
YUGOSLAVIA AND THE GOVERNMENT OF THE REPUBLIC OF INDIA 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 India (hereinafter referred to as: Parties to the Agreement);

Anxious to create favourable conditions for investments enlargement of the investors of one Party to the Agreement in the territory of the other Party to the Agreement;

Noting that stimulation and mutual protection of such investments under international agreement shall contribute to stimulation of an individual business initiative and enlarge the prosperity in both Parties to the Agreement;

Have agreed as follows:

Article 1

Definitions

For the purpose of this Agreement:

1. The expression "investment" shall stand for each type of the existing and future funds, including changes of forms of such investments, in conformity with the national legislation of the Party to the Agreement in whose territory

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the investment is made, and especially, although not exclusively, shall comprise:

- (a) Movable and real estate property as well as other rights such as mortgages, pledges and guarantees;
 - (b) Shares, bonds and securities of the company and any other similar forms of share in the company;
 - (c) Rights to payment claims, or any other claims under the agreement having financial value;
 - (d) Intellectual property rights, such as copyrights and related rights and industrial property rights in conformity with the laws of respective Party to the Agreement;
 - (e) Business concessions, including concessions for researches or extraction of oil, minerals and other natural resources given in conformity with law or pursuant to the agreement concluded in accordance with the laws of respective Party to the Agreement;
2. The expression "investor" shall stand for any citizen or legal entity making an investment in the territory of the other Party to the Agreement:
- (a) "citizens" shall stand for natural persons whose status of citizen arises based on applicable laws of a Party to the Agreement;
 - (b) "legal entity" shall stand for legal entities joined or established or founded on the basis of applicable laws of any of the Parties to the Agreement having their head office in the territory of that Party to the Agreement and making investments in the territory of the other Party to the Agreement;
3. The expression "returns" shall stand for financial amounts brought by investments and comprises, although not exclusively, profit, interest, capital gain, dividends, royalties and other similar compensations;
4. The expression "territory" shall stand for:
- Of The United Nations on Maritime Law from 1982 and International Law.
- (a) With regard to the Federal Republic of Yugoslavia: the areas enclosed by terrestrial borders, the sea area, seabed and its underground out of the territorial waters to which the Party to the Agreement has sovereign rights or jurisdiction, in conformity with its laws and regulations;
 - (b) With regard to the Republic of India: "territory" shall mean the territory of the Republic of India, enclosed by territorial waters and air space above the land, as well as other maritime regions, including Exclusive Economic Zone and coastal stretch, to which the Republic of India has sovereignty, sovereign rights or exclusive jurisdiction based on the applicable laws, Convention.

Article 2

The scope of the Agreement application

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1. This Agreement shall apply to all investments the investors of one Party to the Agreement have made in the territory of the other Party to the Agreement, accepted as such in conformity with its laws and regulations, regardless if they are made prior to or upon entry into force of this Agreement.
2. This Agreement shall not apply to any disputes in relation to investments arisen or claims settled prior to its entry into force.

Article 3

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 shall approve such investments in conformity with its laws and regulations.
2. Investments and returns of the investors of each Party to the Agreement shall enjoy, at any time, an equitable and fair treatment in the territory of the other Party to the Agreement and shall have full protection and security.

Article 4

National treatment and the most favoured nation treatment

1. Each Party to the Agreement shall provide the investments of the investors of the other Party to the Agreement a treatment no less favourable than the one provided to the investments and incomes of its own investors or to investments and incomes of any third country's investors.
2. Each Party to the Agreement shall provide the investors of the other Party to the Agreement, with regard to management, maintenance, exploitation, enjoyment or disposal over such investments a treatment no less favourable than the one provided to its own investors' investments or the investments of the investors of any third country.
3. Provisions of the abovementioned paragraphs 1 and 2 shall not be interpreted so to oblige any Party to the Agreement to give the investors of the other Party to the Agreement any preference in treatment, preferentials or privileges resulting from:
 - (a) customs union, free trade zone, monetary union or similar international agreement founding such a union or any other form of regional cooperation whose signatory one or the other Party to the Agreement is or may become, or
 - (b) any bilateral or international agreement referring in its entirety or mostly to taxation.

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

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nationalization or expropriation (hereinafter referred to as: expropriation) in the territory of the other Party to the Agreement, except in public interest, in conformity with law, on non-discriminatory basis and with equitable and fair compensation. Such a compensation shall be adequate to the actual market value of the expropriated investment immediately prior to expropriation or before the existing expropriation becomes widely known fact, depending on what happens first, it shall include interest calculated according to market rate until the payment date, and shall be paid with no unjustified delay, immediately collectible and freely transferable in convertible currency.

2. The investor who has suffered damage shall be entitled, according to the laws of the Party to the Agreement which performed expropriation, to require from a judicial or any other independent body of that Party to the Agreement to make consideration of his/her case and evaluation of his/her investments, in accordance with principles defined in this Article. The Party to the Agreement performing expropriation shall endeavour to provide an urgent consideration.

Article 6

Retrieval of losses

The investors of one 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 or civil commotions, revolt, rebellion, uprising or riots in the territory of the other Party to the Agreement, shall be provided a treatment by the other Party to the Agreement, with regard to return, reimbursement, compensation or any other way of loss retrieval, no less favourable than the one the other Party to the Agreement provides to its own investors or the investors of any third country. Payments on the quoted grounds shall be freely transferable in convertible currency.

Article 7

Repatriation of investments and returns

1. Each Party to the Agreement, in conformity with its laws and regulations, shall approve all the funds of the investors of the other Party to the Agreement, referring to the investments in its territory, to be freely transferable, with no unjustified delay, and on non-discriminatory basis. Such funds may comprise:
 - (a) capital and additional amounts of capital for maintenance and enlargement of investments;
 - (b) Net operational gain;
 - (c) Discharge of any loan, including interests to the loan referring to the investment;
 - (d) Funds the investors receive in case of entire or partial sale or liquidation of their investments;
 - (e) Salaries and other compensations of the staff engaged abroad in relation to the investment;
 - (f) Payments made for the purpose of Articles 5 and 6 of this Agreement.

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2. Unless otherwise agreed between the parties, currency transfer for the purpose of paragraph 1 of this Article shall be approved in the currency of a prime investment or in any other convertible currency. Such a transfer shall be performed according to market exchange rate prevailing on the date of transfer.

Article 8

Subrogation

If one Party to the Agreement, or its appointed agency, has guaranteed any reimbursement on the grounds of non-commercial risks, with regard to investments of any of its investors in the territory of the other Party to the Agreement, and made payments to such investors, with regard to their claims according to this Agreement, the other Party to the Agreement shall agree that the former Party to the Agreement, or its appointed agency, shall be entitled to realize its rights pursuant to subrogation, and to acknowledge the claims of those investors. Subrogated rights or claims shall not exceed prime rights or claims of those investors. Payments, if any, according to this Article shall be freely transferable in convertible currency.

Article 9

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

1. Each dispute between investors of one Party to the Agreement and the other Party to the Agreement in relation to the investments, previous according to this Agreement, shall be settled, as much as possible, in a friendly manner, through negotiations between the parties in dispute.
2. Each dispute of that kind, not settled in a friendly manner within six months, may be submitted:
 - (a) for settlement, in conformity with the law of the Party to the Agreement who has approved an investment, to a competent court, arbitration or administrative body of that Party to the Agreement or
 - (b) for international settlement, in conformity with Rules for settlement of the UN Commission for the International Trade Law (UNCITRAL)
3. If the Parties to the Agreement fail to agree on procedure for the dispute settlement, foreseen in paragraph 2 of this Article or if the dispute is submitted for reconciliation, but the procedure of settlement was completed in a way other than signing a settlement agreement, a dispute may be submitted for arbitration. Arbitration procedure shall be as follows:
 - (a) If the Party to the Agreement which the investor belongs to, and the other Party to the Agreement are both signatories of the Convention for settlement of investment disputes between countries and other countries' citizens, opened for signing in Washington, D.C. on 18 March 1965 (ICSID Convention) and at the investor's written consent to submit the dispute for settlement to the International Centre for settlement of investment disputes, such a dispute shall be submitted to the Centre; or

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- (b) If both parties in dispute agree, a dispute shall be settled according to Additional privileges of ICSID Convention for administrative procedure of settlement, arbitration and investigation procedure; or
- (c) any ad hoc arbitration court, submitted by one of the parties in dispute, in accordance with Arbitration rules of the UN Commission for the International Trade Law (UNCITRAL), 1976, being a subject of the following changes:
 - (i) for the purpose of Article 7 of the Rules, a person authorized for appointments shall be President, Vice President or a judge of the International Court of Justice, subsequent according to seniority, being not a citizen of one or the other Party to the Agreement. The third arbiter shall not be a citizen of one or the other Party to the Agreement.
 - (ii) The Parties shall appoint their respective arbiters within two months.
 - (iii) Arbitration judgment shall be made in accordance with provisions of this Agreement. 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 made.
 - (iv) Arbitration court shall acknowledge the basis of its decision and shall give an explanation at the request of one or the other party.

Article 10

Disputes between the Parties to the Agreement

1. Disputes between the Parties to the Agreement in relation to interpretation or application of this Agreement shall be settled, as much as possible, through negotiations.
2. If a dispute between the Parties to the Agreement fails to be settled in this manner within six months following the day of dispute occurrence, it shall be submitted, at the request of one or the other Party to the Agreement, to an arbitration court for settlement.
3. Such an arbitration court shall be constituted for each individual case as follows. Within three months following the day of reception of arbitration request, each Party to the Agreement shall appoint one member to a court. Those two members shall select a citizen of a third country, who, with consent of both Parties to the Agreement, shall be appointed the President of the court. The President shall be appointed within two months following the date of appointment of the other two members.
4. Unless necessary appointments are performed within terms defined in paragraph 3 of this Article, both Parties to the Agreement may request, in the absence of any agreement, from the President of the International Court of Justice to perform necessary appointments. If the President is a citizen of one or the other Party to the Agreement or if unable in any way to perform that function, the vice president shall be asked to perform necessary appointments. If the vice president appears also to be a citizen of any of the

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Parties to the Agreement or in any way unable to perform the mentioned 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 appointment.

5. Arbitration court shall make a decision pursuant to provisions of this Agreement as well as to widely accepted principles of the international law. Arbitration court shall make a decision by majority of vote. Those decisions shall be binding for both Parties to the Agreement. Each Party to the Agreement shall bear costs for its member to the court and his/her participation in arbitration procedure, and the costs of the President and additional costs shall be equally at the expense of both Parties to the Agreement. The Court, however, may determine, by its own decision, one of the Parties to the Agreement to bear major part of costs and that decision shall be binding for both Parties to the Agreement. The Court shall define its own work procedure.

Article 11

Entry and stay of employees

Each Party to the Agreement shall allow entry, in conformity with its laws and regulations, within necessary period of investment continuation, and approve permits for residence, work and travels, to the natural persons of the other Party to the Agreement, and to the staff from abroad, employed by an investor of the other Party to the Agreement, in order to perform activities related to investments.

Article 12

Application of the Agreement

1. Unless otherwise defined by this Agreement, all investments shall be regulated by applicable laws in the territory of the Party to the Agreement in which those investments are made.
2. Despite paragraph 1 of this Article, no part of this Agreement shall prevent the host Party to the Agreement to take measures to protect its vital security interests, or under the circumstances of exceptional jeopardy, to undertake activities pursuant to its laws regularly and in justified manner applied on non-discriminatory basis.

Article 13

Application of other regulations

If provisions of laws of one or the other Party to the Agreement or current or future obligations according to the international law between the Parties to the Agreement, beside the current Agreement, consist of regulations, general or specific, providing investments of the investors of the other Party a treatment more favourable than the one provided by this Agreement, such regulations shall prevail over this Agreement, to the extent they are more favourable in.

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Article 14

Entry into force

This Agreement shall be subjected to ratification and shall enter into force on the day of exchange of ratification instruments.

Article 15

Continuation and expiration

1. This Agreement shall be concluded for a ten year period and shall be automatically extended unless one of the Parties to the Agreement informs in written the other Party to the Agreement about its intention to terminate the Agreement. The Agreement shall be deemed terminated a year following the reception date of such a written notice.
2. Despite termination of this Agreement, pursuant to paragraph 1 of this Article, the Agreement shall continue to be in force during the forthcoming period of ten years following the date of validity termination, with regard to investments realized or acquainted prior to the expiration date of this Agreement.

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

Done in Belgrade, on the day of 31 January 2003, in two originals, in Serbian, Hindi and English, where both texts are equally authentic.

In case of any discrepancy, the text in English shall prevail.

For the Federal Government of
The Federal Republic of Yugoslavia
Goran Svilanovic, m. p.

For the Government of
The Republic of India
Arun Kumar, 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.