

# AGREEMENT BETWEEN BOSNIA AND HERZEGOVINA AND THE REPUBLIC OF LITHUANIA ON THE PROMOTION AND PROTECTION OF INVESTMENTS

Bosnia and Herzegovina and the Republic of Lithuania, hereinafter referred to as "the Contracting Parties",

Desiring to extend and intensify the economic co-operation between the Contracting Parties on the basis of equality and mutual benefit;

Intending to create and maintain favourable conditions for greater investment by investors of one Contracting Party in the territory of the other Contracting Party;

Recognising that the promotion and reciprocal protection of such investments under this Agreement will stimulate business initiative and will increase economic prosperity of the Contracting Parties;

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall comprise every kind of asset, invested by an investor of one Contracting Party in the territory of the other Contracting Party, provided that the investment has been made in accordance with the laws and regulations of the latter and in particular, though not exclusively, shall include: Movable and immovable property as well as any other property rights such as mortgages and liens or other securities; Shares in, stocks and any other form of participation in companies; Claims to money or to any performance having an economic value; Intellectual property rights such as copyright and neighbouring rights, patents, industrial designs, trademarks, tradenames and know-how; Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract and exploit natural resources.a) Movable and immovable property as well as any other property rights such as mortgages and liens or other securities;

b) Shares in, stocks and any other form of participation in companies;

c) Claims to money or to any performance having an economic value;

d) Intellectual property rights such as copyright and neighbouring rights, patents, industrial designs, trademarks, tradenames and know-how;

e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract and exploit natural resources.

Any subsequent change in the form in which assets are invested or reinvested shall not affect their character as investments provided that such change is in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

2. The term "investor" means: In respect of Bosnia and Herzegovina: Natural persons deriving their status as Bosnia and Herzegovina citizens from the law in force in Bosnia and Herzegovina if they have permanent residence or main place of business in Bosnia and Herzegovina; Legal persons established in accordance with the laws in force in Bosnia and Herzegovina, which have their registered seat, central management or main place of business in the territory of Bosnia and Herzegovina. In respect of the Republic of Lithuania: Natural persons who are nationals of the Republic of Lithuania according to its laws and regulations and persons without nationality, permanently residing in the territory of the Republic of Lithuania; Legal persons constituted under the laws and regulations of the Republic of Lithuania.a) In respect of Bosnia and Herzegovina: Natural persons deriving their status as Bosnia and Herzegovina citizens from the law in force in Bosnia and Herzegovina if they have permanent residence or main place of business in Bosnia and Herzegovina; Legal persons

established in accordance with the laws in force in Bosnia and Herzegovina, which have their registered seat, central management or main place of business in the territory of Bosnia and Herzegovina.(i) Natural persons deriving their status as Bosnia and Herzegovina citizens from the law in force in Bosnia and Herzegovina if they have permanent residence or main place of business in Bosnia and Herzegovina;

(ii) Legal persons established in accordance with the laws in force in Bosnia and Herzegovina, which have their registered seat, central management or main place of business in the territory of Bosnia and Herzegovina.

b) In respect of the Republic of Lithuania: Natural persons who are nationals of the Republic of Lithuania according to its laws and regulations and persons without nationality, permanently residing in the territory of the Republic of Lithuania; Legal persons constituted under the laws and regulations of the Republic of Lithuania.(i) Natural persons who are nationals of the Republic of Lithuania according to its laws and regulations and persons without nationality, permanently residing in the territory of the Republic of Lithuania;

(ii) Legal persons constituted under the laws and regulations of the Republic of Lithuania.

3. The term "returns" means an amount yielded by an investment in the certain period of time and in particular, though not exclusively, includes profits, capital gains, interest, dividends, royalties and fees.

4. The term "territory" means: With respect to Bosnia and Herzegovina: all land territory of Bosnia and Herzegovina, its territorial sea, whole bed and subsoil and air space above, including any maritime area situated beyond the territorial sea of Bosnia and Herzegovina which has been or might in the future be designated under the law of Bosnia and Herzegovina in accordance with international law as an area within which Bosnia and Herzegovina may exercise rights with regard to the seabed and subsoil and the natural resources. With respect to the Republic of Lithuania: the territory under the sovereignty of the Republic of Lithuania and other areas over which the Republic of Lithuania exercises rights or jurisdiction in accordance with international law.a) With respect to Bosnia and Herzegovina: all land territory of Bosnia and Herzegovina, its territorial sea, whole bed and subsoil and air space above, including any maritime area situated beyond the territorial sea of Bosnia and Herzegovina which has been or might in the future be designated under the law of Bosnia and Herzegovina in accordance with international law as an area within which Bosnia and Herzegovina may exercise rights with regard to the seabed and subsoil and the natural resources.

b) With respect to the Republic of Lithuania: the territory under the sovereignty of the Republic of Lithuania and other areas over which the Republic of Lithuania exercises rights or jurisdiction in accordance with international law.

## **Article 2. Promotion of Investments**

Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

## **Article 3. Protection and Treatment of Investments**

1. Each Contracting Party shall at all times ensure fair and equitable treatment of the investments made by investors of the other Contracting Party as well as their full protection and security.

2. Either Contracting Party shall not by arbitrary or discriminatory measures impair the expansion, management, maintenance, use, enjoyment or disposal of investments made by investors of the other Contracting Party.

3. Each Contracting Party shall accord to investments and returns of investors of the other Contracting Party treatment no less favourable than that accorded to investments and returns of its own investors or to investments and returns of investors of any third State, whichever is more favourable to the investors concerned.

4. Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their expansion, management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable to the investors concerned.

5. The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege accorded to the investors of any third State by virtue of:

a) Any existing or future customs union, common market, free trade area, other forms of regional economic cooperation or similar international arrangements to which either Contracting Party is or may become a party;

b) Any existing or future international agreements relating to avoidance of double taxation or any other international

arrangements relating wholly or mainly to taxation issues.

## **Article 4. Nationalisation and Expropriation**

1. Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to requisition or to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose related to the internal needs and under due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation.

2. Such compensation shall amount to the fair market value of the investments affected immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier and shall be paid without undue delay. The compensation shall include interest calculated on the six-month LIBOR basis, from the date of expropriation until the date of full payment.

3. Investors, whose assets are being expropriated shall, without prejudice to their rights under Article 8 of this Agreement, have a right to prompt review by the appropriate judicial or other competent and independent authority of the expropriating Contracting Party to determine whether such expropriation, and any related compensation conforms to the principles of this Article and the laws and regulations of the expropriating Contracting Party.

## **Article 5. Compensation for Losses**

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

2. Notwithstanding paragraph 1 of this Article, investors of one Contracting Party who in any of the situations referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

- a) Requisitioning of their investments or part thereof by the latter's forces or authorities, or
- b) Destruction of their investments or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

Shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective.

## **Article 6. Transfers**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments relating to their investments in and out of its territory. Such transfers shall include in particular, though not exclusively:

- a) Initial capital and additional amounts necessary for the maintenance and extension of the investment;
- b) Returns;
- c) Proceeds from total or partial sale or liquidation of the investment;
- d) Funds in repayment of loans related to the investment;
- e) Compensation provided for in Articles 4 and 5 of this Agreement;
- f) Payments under a guarantee or insurance contract referred to in Article 7 of this Agreement;
- g) Payments arising out of the settlement of the disputes;
- h) Earnings and other remuneration of personnel engaged from abroad in connection with an investment in its territory.

2. Without prejudice to measures adopted by the European Union, transfers shall be made in the currency in which the original investment was made or in any freely convertible currency agreed upon by the investor, at the applicable market rate of exchange prevailing on the date of transfer, and effected without undue delay.

3. Transfers shall be done on fair and non-discriminatory basis, in accordance with the procedures established by the exchange regulations of the Contracting Party in whose territory the investment was made, which shall not imply a rejection,

suspension or denaturalisation of such transfer.

4. The Contracting Parties shall accord to the transfers referred to in paragraphs 1, 2 and 3 of this Article treatment no less favourable than that accorded to transfers related to investments made by investors of any third State.

5. Notwithstanding the foregoing provisions of this Article, either Contracting Party may maintain equitable, non-discriminatory and good faith application of measures, relating to taxation, protection of rights of creditors, or ensuring compliance with other laws and regulations, provided that such measures and their application shall not be used as a means of avoiding the Contracting Party's transfer commitments or transfer obligations under this Agreement.

## **Article 7. Subrogation**

1. If one Contracting Party or its designated agency ("the first Contracting Party") makes a payment under a guarantee or contract of insurance against noncommercial risks given in respect of an investment in the territory of the other Contracting Party ("the second Contracting Party"), the second Contracting Party shall, notwithstanding its rights under the Article 9 of this Agreement, recognise:

a) The assignment to the first Contracting Party by law or by legal transaction of all the rights and claims of the party indemnified, and

b) That the first Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified.

## **Article 8. Settlement of Disputes between an Investor and a Contracting Party**

1. Any dispute which may arise between one Contracting Party and an investor of the other Contracting Party in connection with an investment on the territory of that other Contracting Party shall be settled amicably through consultations and negotiations.

2. If a dispute can not be settled amicably within six months from the date on which either party to the dispute requested amicable settlement, and without prejudice to the right to use domestic judicial and administrative remedies, the investor shall be entitled to submit the dispute either to:

a) Ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

b) The International Centre for Settlement of Investment Disputes (hereinafter referred to as "the Centre") through conciliation or arbitration established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature in Washington D.C. on 18 March 1965 (hereinafter referred to as "the Convention").

3. The arbitration award shall be based on:

- The provisions of this Agreement;

- The laws and regulations of the Contracting Party in whose territory the investment has been made including the rules relative to conflict of laws; and

- The rules and universally accepted principles of international law.

4. The arbitration award shall be final and binding on both parties to the dispute. Each Contracting Party shall carry out without delay any such award, recognised in accordance with the laws and regulations of the respective Contracting Party.

5. During the arbitral or execution proceedings neither Contracting Party shall assert as a defence, objection, counterclaim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damage has been received or will be received by the party concerned, pursuant to a guarantee against non-commercial risks or insurance contract.

## **Article 9. Settlement of Disputes between Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled by consultations and negotiations through diplomatic channels.

2. If a dispute between the Contracting Parties cannot be settled in accordance with paragraph 1 of this Article within six months from the date of request for settlement, the dispute shall upon the request of either Contracting Party be submitted to an arbitral tribunal of three members.
3. Such arbitral tribunal shall be constituted for each individual case in the following way. Within two months from the date of receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.
4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.
5. The tribunal shall determine its own procedure.
6. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties.
7. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties.
8. A dispute shall not be submitted to an international arbitral tribunal under the provisions of this Article, if the same dispute has been brought before another international arbitration court under the provisions of Article 8 and is still before the court. This will not impair the possibility of dispute settlement in accordance with paragraph 1 of this Article.

## **Article 10. Consultations and Exchange of Information**

1. Upon the request by either Contracting Party, the other Contracting Party shall, without undue delay, begin consultations concerning interpretation and application of this Agreement.
2. Upon the request by either Contracting Party, information shall be exchanged on the impact that the laws, regulations, decisions, administrative practices or procedures or policies of the other Contracting Party may have on investments covered by this Agreement.

## **Article 11. Application of other Rules**

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement as long as they last.

## **Article 12. Application of the Agreement**

This Agreement shall apply to the investments made by investors from one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations, prior to as well as after the entry into force of this Agreement, but shall not apply to any dispute concerning an investment which arose or could have arisen, or any claim which was settled before its entry into force.

## **Article 13. Amendments**

At the time of entry into force of this Agreement or at any time thereafter the provisions of this Agreement may be amended in such manner as may be agreed in writing between the Contracting Parties. Such amendments shall enter into force when the Contracting Parties have notified each other in writing that all their respective internal procedures for their entry into force have been completed.

## **Article 14. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force on the date when Contracting Parties have notified the other in writing that all their respective internal legal procedures for its entry into force have been completed.
2. This Agreement shall remain in force for a period of fifteen (15) years. It shall continue to be in force thereafter until the expiration of twelve (12) months from the date on which either Contracting Party shall have given written notice of termination to the other.
3. With respect to investments made prior to the effective date of termination of this Agreement, the provisions of Articles 1 through 12 of this Agreement shall remain in force for a further period of ten (10) years from such date.

In witness whereof the undersigned representatives, duly authorised thereto, have signed this Agreement.

Done in duplicate at ..... on ..... in the Bosnian/Croatian/Serbian, Lithuanian and English languages. Each text is equally authentic. In case of divergent interpretation, the English text shall prevail