

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CROATIA AND THE GOVERNMENT OF THE REPUBLIC OF MACEDONIA CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS**

THE REPUBLIC OF CROATIA and THE REPUBLIC OF MACEDONIA, hereinafter referred as the Contracting Parties

Desiring to intensify economic cooperation to the mutual benefit of both States,

Intending to create and maintain favourable conditions for investments by investors of one Contracting party in the territory of the other Contracting Party,

Recognizing the need to promote and protect foreign investments with the aim to foster the economic prosperity of both Contracting Parties,

Have agreed as follows:

## **Article 1. Definitions**

For the purpose of this Agreement

1. The term "investment" means any kind of asset invested by an investor of one Contracting Party, provided that they have been made in accordance with the laws and regulations of the other Contracting Party and shall include in particular though not exclusively:
  - a) Movable and immovable property as well as any other rights "in rem" such as servitude, mortgages, liens, pledges;
  - b) Shares, parts or any other of participation in companies;
  - c) Claims to money or to any performance having an economic value;
  - d) Copyrights, industrial property rights (such as patents, utility models, industrial design or models, trade or service marks, trade names, indications or origin), know-how and goodwill;
  - e) Rights granted by a public authority to carry out an economic activity, including concessions, for example, to search for, extract or exploit natural resources.
2. The term "investor" refers to any natural or legal person of one Contracting Party that invested, is investing or intends to invest on the territory of the other Contracting Party.
3. The term "natural person" refers with regard to either Contracting Party to any natural person who is a national of the parties to this Agreement.
4. The term "legal person" means:
  - a) Any entity established on the territory of either Contracting Parties and recognized as a legal person in accordance with the respective state legislature;
  - b) Legal entities established under the law of any country which are, directly or indirectly, controlled by nationals of that Contracting Party or by legal entities having their seat together with real economic activities in the territory of that Contracting Party; it being understood that control requires substantial part in the ownership.
5. Any change in the form of an investment, admitted in accordance with laws and regulations of the Contracting Party in whose territory the investment was made, does not affect its character as an investment.
6. If the investment is made by an investor through an entity not covered by paragraph 4b) of this Article, in which he holds an equity participation, such investor shall enjoy the benefits of this Agreement to the extent of such indirect equity

participation, provided, however, that such an investor shall not enjoy the benefits of this Agreement if the investor invokes the dispute settlement mechanism under another foreign investment protection agreement concluded by the Contracting Party in whose territory the investment is made.

7. The term "return" means all amounts yielded by an investment and in particular, though not exclusively, profits, interest, capital gains, dividends, royalties, fees or other current income.

8. The term "territory" means the territory on land, water and in air of the Republic of Croatia or the Republic of Macedonia respectively over which the State concerned exercises, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of natural resources of such areas. As far as the Republic of Croatia is concerned the term "territory" means also those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea.

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

1. Each Contracting Party shall promote, in its territory, investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.

2. When a Contracting Party shall have admitted an investment in its territory, it shall grant in accordance with its laws and regulations the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Contracting Party shall, whenever needed, endeavour to issue the necessary authorizations concerning the activities of consultants and other qualified persons of foreign nationality.

3. The Contracting Parties shall enable investors of the other Contracting Party to get optimal information about possibilities of investing.

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

1. Each Contracting Party shall protect within its territory, investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension sale and should it so happen, liquidation of such investments.

2. Each Contracting Party shall ensure fair and equitable treatment, within its territory, of the investments of the investors of the other contracting party. This treatment shall not be less favourable than that granted by each Contracting Party to investments made in its territory by investors of the most favoured nation, if this latter treatment is more favourable. As for joint ventures they shall enjoy the aforementioned treatment as entity.

3. The treatment of the most favoured nation shall not apply to privileges which either Contracting Party accords to investors of a third State because of its membership in, or association with, a free trade area, customs union, common market or to an existing or future convention on the avoidance of double taxation or a convention on other fiscal matters.

## **Article 4. Expropriation and Compensation**

1. Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalization or any other measure having the same nature or an equivalent effect against investments belonging to investors of the other Contracting Party, unless the measures are taken in the public interest, on a non discriminatory basis and under due process of law and provided that provisions be made for effective and adequate compensation. .

Such compensation shall amount to the market value of the expropriated investment immediately before the expropriation or the impending expropriation become public knowledge. The compensation for damage includes also the interest calculated on the annual LIBOR basis from the date of nationalization to the date of payment. The amount of compensation shall be settled in the currency convertible and freely transferable and paid without undue delay to the person entitled there to without regard to its residence or domicile. A transfer shall be deemed to be made "without undue delay" if effected within such period as is normally required for the completion or transfer formalities. The said period shall commence on the day on which the relevant request has been submitted and may not exceed three months. 2. Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favourable than that accorded to its own investors or to investors of any third State. Resulting payments shall, whenever possible, be transferable without delay, in the convertible and freely transferable currency.

3. Investors referred to in Article 1, paragraph 4, letter b) may not raise a claim based on paragraph 1 or 2 of this Article of compensation has been paid pursuant to a similar provision in another Investment Protection Agreement concluded by the Contracting Party in the territory of which the investment has been made.

## **Article 5. Transfer**

1. Each Contracting Party, in whose territory investments have been made by investors of the other Contracting Party, shall grant those investors a free transfer of the payments relating to these investments, particularly of:

- a) The capital and additional sums necessary for the maintenance and development of the investment;
- b) Gains, profits, interests, dividends and other current income;
- c) Funds in repayment of loans including interest regularly contracted and documented and directly related to a specific investment;
- d) Royalties and fees;
- e) The proceeds from a total or partial sale or liquidation of an investment;
- f) Compensations provided for in Article 4;
- g) The earnings of nationals of one Contracting Party who are allowed to work in connection with an investment in the territory of the other.

2. Transfers shall be effected without delay in a freely convertible currency in the normal applicable exchange rate at the date of the transfer, in accordance with the procedures established by the Contracting party in whose territory the investment was made, provided that all financial obligations toward this Contracting party have been fulfilled.

3. The Contracting Parties undertake to accord to transfers referred to in paragraphs 1 and 2 of this Article a treatment no less favourable than that accorded to transfers originating from investments made by investors of any third State.

## **Article 6. Subrogation**

1. If a Contracting party or any agency makes a payment to any of its investors under a guarantee or insurance, it has contracted in respect of an investment, the other Contracting Party shall recognize the validity of the subrogation in favour of the former Contracting Party or agency to any right or title held by the investor.

The Contracting Party or any agency that is subrogated in the rights of an investor shall be entitled to the same rights as those of the investor and to the extent that they exercise such rights they shall do so subject to the obligations of the investor pertaining to such insured investment. 2. In the case of subrogation as defined in paragraph 1 above, the investor shall not pursue a claim unless authorized to do so by the Contracting party or any agency thereof.

## **Article 7. Settlement of Disputes between One Contracting Party and an Investor of the other Contracting Party**

1. Disputes between one of the Contracting Parties and an investor of the other Contracting Party shall be notified in writing, including detailed information, by the investor to the host Contracting Party of the investment.

2. Any dispute between one Contracting Party and an investor of the other Contracting Party including the disputes in connection with compensation in case of expropriation, nationalization, confiscation or similar measures, as well as the disputes in connection with the amounts of appropriate payments should be settled by agreement

3. If the dispute cannot be settled amicably within six months from the date of the written notification by which the other Contracting Party has been advised about the subject of the dispute, the investor concerned may suggest, at his own choice, that the dispute be submitted to:

- The competent court of the Contracting Party in the territory of which the investment has been made;
- The "ad hoc" court of arbitration established under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law (UNCITRAL) .

4. The arbitration award shall be based on:

- The provisions of this Agreement;

- The national law of the Contracting Party in whose territory the investment was made, including the rules relative to conflicts of law;

- The rules and the universally accepted principles of international law.

5. The arbitration decisions shall be final and binding for the Parties in conflict. Each Contracting Party undertakes to execute the decisions in accordance with its national law.

## **Article 8. Settlement of Disputes between Contracting Parties**

1. Disputes between Contracting Parties regarding the interpretation and application of the provisions of this Agreement shall be settled by consultation and negotiation through diplomatic channels.

2. If both Contracting Parties cannot reach an agreement within six months after the beginning of the dispute between themselves, the latter shall, upon request of either Contracting Party, be submitted to an arbitration tribunal which shall be constituted as follows:

Each Contracting Party shall appoint an arbitrator and these two arbitrators shall nominate a chairman who shall be a national of a third State, which maintains diplomatic relations with both Contracting Parties.

3. If one of the Contracting parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

4. If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting party by the President of the International Court of Justice.

5. If, in the cases specified under paragraphs 3 and 4 of this Article, the President of the International Court of Justice is prevented from carrying out the said function, or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or if he is national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.

6. Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure. The tribunal shall reach its decisions by a majority of votes.

7. The decisions of the tribunal are final and binding for each Contracting Party.

8. Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation in the arbitral proceedings; the costs of the chairman and remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, decide that a higher proportion of costs shall be borne by one of the Contracting Parties and this award shall be binding on both Contracting Parties.

## **Article 9. More Favourable Provisions**

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

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

Upon request by either Contracting Party, the other Contracting Party shall agree promptly to consultations on the interpretation or application of this Agreement. Upon request by either Contracting Party, information shall be exchanged on the impact that the laws, regulations, decisions, administrative practices or procedures or policies of other Contracting Party may have on investments covered by this Agreement.

## **Article 11. Entry Into Force**

This Agreement shall enter into force on the latter date on which either Contracting Party notifies the other that its internal

legal requirements for the entry into force of this Agreement have been fulfilled.

## **Article 12. Duration and Denunciation**

1. This Agreement shall remain in force for a period of ten (10) years and shall continue in force thereafter for a similar period or periods unless, one year before the expiration of the initial or any subsequent period, either Contracting Party notifies the other Contracting Party of its intention to denounce the Agreement. The notice of denunciation shall become effective one year after it has been received by the other Contracting Party.

2. In respect to investments made prior to the date when the notice of denunciation of this Agreement become effective, the provisions of this Agreement shall continue to be effective for a period of ten years from the date of denunciation of this Agreement.

Done in Zagreb, on 6th July 1994, in two original versions, both in Croatian, Macedonian and English languages. In a case of divergence, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF CROATIA FOR THE GOVERNMENT OF THE REPUBLIC OF MACEDONIA