# AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CROATIA AND THE GOVERNMENT OF THE REPUBLIC OF BELARUS ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Croatia and the Government of the Republic of Belarus (hereinafter referred to as the "Contracting Parties";

Desiring to promote greater economic cooperation between them, with respect to investment by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that agreement upon the treatment to be accorded to such investment will stimulate the business initiative and the economic development of the Contracting Parties;

Agreeing that a stable legal framework for investment will maximize effective utilization of economic resources and improve living standards;

Having resolved to conclude the present Agreement;

Have agreed as follows:

## Article 1. Definitions

For the purposes of the Agreement:

1. The term "investment" means every kind of assets invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations and shall include in particular, though not exclusively:

a) Movable and immovable property as well as any other rights such as mortgages, liens, pledges and similar rights;

b) Stock, shares, debentures and other forms of participation in legal persons;

c) Claims to money or to any performance having economic value,

d) Intellectual and industrial property rights, as defined in the multilateral agreements concluded under the auspices of the World Intellectual Property Organisation, in as far as both Contracting Parties are parties to them, including, but not limited to, copyrights, trademarks, patents, industrial designs and technical processes, rights in plants varieties, know-how, trade secrets, trade names and goodwill;

e) Rights to engage in economic and commercial activities conferred by its law or by virtue of a contract, including concessions to search for, cultivate, extract or exploit natural resources.

Any change of the form in which assets are invested or reinvested shall not affect their character as an investment. 2. The term "investor" means in respect of either Contracting Party:

a) Natural person having the nationality of the Republic of Croatia or the Republic of Belarus, who makes an investment in the territory of the other Contracting Party;

b) Any legal person incorporated, constituted or otherwise duly organised in accordance with the laws and regulations of one Contracting Party, having its seat and performing real business activity in the territory of the same Contracting Party and making an investment in the territory of the other Contracting Party;

c) Any legal entity constituted in accordance with the laws and regulations of the Contracting Party or any third State in whose territory the investor referred to in a) or b) of this paragraph exercises a dominant influence.

3. The term "returns" means income deriving from an investment and includes, in particular though not exclusively, profits,

dividends, interests, capital gains, royalties, patent and licence fees, and other fees.

4. The term "without delay" means such period as is normally required for the completion of necessary formalities for the transfer of payments. The said period shall commence on the day on which the request for transfer has been submitted and may not exceed one month.

5. The term "freely convertible currency" means any currency that the International Monetary Fund determines, from time to time, as freely usable currency in accordance with the Articles of Agreement of the International Monetary Fund and any amendment thereto.

6. The term "territory" means:

a) With respect to the Republic of Croatia: the territory of the Republic of Croatia as well as those maritime areas adjacent to the outer limit of the territorial sea including the seabed and subsoil over which the Republic of Croatia exercises, in accordance with international law, its sovereign rights and jurisdiction;

b) With respect to the Republic of Belarus: the territory over which the Republic of Belarus exercises, in accordance with international law, sovereign rights and jurisdiction.

7. The term "laws and regulations" in respect of either Contracting Party means the laws and regulations applicable in the Republic of Croatia or the Republic of Belarus accordingly.

## Article 2. Promotion and Admission of Investments

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

2. In order to encourage mutual investment flows, each Contracting Party shall endeavour to inform the other Contracting Party, at the request of either Contracting Party, on the investment opportunities in its territory.

3. Each Contracting Party shall grant, whenever necessary, in accordance with its laws and regulations, without undue delay, the permits required in connection with the activities of consultants or experts engaged by investors of the other Contracting Party.

4. Each Contracting Party shall permit, subject to its laws, regulations and procedures affecting the entry, stay and work of natural persons, regardless of nationality, key personnel, including top managerial and technical persons who are employed for the purposes of investments by an investor of the other Contracting Party, to enter, stay and work in its territory. Immediate family members (spouse and minor children) of such key personnel shall also be granted similar treatment with regard to the entry and temporary stay in the host Contracting Party.

## Article 3. Protection of Investments

1. Each Contracting Party shall extend in its territory lawful protection and security to investments and returns of investors of the other Contracting Party. Neither Contracting Party shall hamper, by arbitrary or discriminatory measures, the development, management, maintenance, use, enjoyment, expansion, sale and if it is the case, the liquidation of such investments. Either Contracting Party shall observe any other obligation it may have entered into with regard to investments of investors of the other Contracting Party.

2. Investments or returns of investors of either Contracting Party in the territory of the other Contracting Party shall be accorded fair and equitable treatment in accordance with international law and provisions of this Agreement.

## Article 4. National Treatment and Most Favoured Nation Treatment

1. Neither Contracting Party shall accord in its territory to investments and returns of investors of the other Contracting Party a treatment less favourable than that which it accords to investments and returns of its own investors, or investments and returns of investors of any third State, whichever is more favourable to investors concerned.

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

3. The provisions of paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege which may be extended by the former

Contracting Party by virtue of:

a) Any existing or future customs union or economic union, free trade area or similar international agreements to which either of the Contracting Party is or may become a party in the future;

b) Any international agreement or arrangement, completely or partially related to taxation.

## Article 5. Expropriation

1. A Contracting Party shall not, in its territory, expropriate or nationalise directly or indirectly an investment of an investor of another Contracting Party or take any measure or measures having equivalent effect (hereinafter referred to as "expropriation" except:

a) For a purpose which is in the public interest,

b) On a non-discriminatory basis,

c) In accordance with due process of law, and

d) Accompanied by payment of prompt, adequate and effective compensation.

2. Compensation shall:

- Be paid without delay;

- Be equivalent to the market value of the expropriated investment at the time immediately before the expropriation was taken or become publicly known, whichever is earlier; include interest calculated on the LIBOR rate basis from the date of expropriation until the date of the actual payment; be fully realisable and freely transferable.

3. An investor of a Contracting Party which claims to be affected by expropriation by another Contracting Party shall have the right to prompt review of his/its case, including the valuation of his/its investment and the payment of compensation in accordance with the provisions of this Article, by a judicial authority or another competent and independent authority of the latter Contracting Party.

## Article 6. Compensation for Damage or Loss

1. An investor of either Contracting Party which has suffered losses owing to war or other armed conflict, state of emergency, civil disturbances, revolution, riot or any other similar events in the territory of the other Contracting Party, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or any other settlement, a treatment no less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable to the investor.

2. Without prejudice to paragraph 1 of this Article an investor of one Contracting Party who in any of the events referred to in that paragraph suffers damage or loss in the territory of the other Contracting Party resulting from:

a) Requisitioning of his/its investment or part thereof by the latter 's forces or authorities;

b) Destruction of his/its investment or part thereof by the latter's forces or authorities which was not required by the necessity of the situation, shall be accorded by the latter Contracting Party restitution or compensation which in either case shall be prompt, adequate and effective and, with respect to compensation, shall be in accordance with Article 5 of this Agreement.

## Article 7. Transfers

1. Each Contracting Party shall allow, without delay, to the investors of the other Contracting Party, after they have fulfilled all their fiscal obligations, the transfer of payments including, in particular, though not exclusively:

a) The initial capital and additional amounts to maintain or increase an investment;

b) Returns;

c) Payments made under a contract including a loan agreement;

d) Proceeds from the sale of liquidation of all or any part of an investment;

e) Payments of compensation under Articles 5, 6 and 8 of this Agreement;

f) Payments arising out of the settlement of an investment dispute;

g) Earnings and other remuneration of personnel engaged from abroad in connection with an investment.

2. Transfers of payments under paragraph 1 of this Article shall be effected without delay and in a freely convertible currency.

3. The exchange of freely convertible currency for making transfers under this Article shall be made at the market rate of exchange applicable on the date of transfer pursuant to the exchange regulations of the Contracting Party concerned.

## Article 8. Subrogation

If a Contracting Party or its designated Agency makes a payment under an indemnity, guarantee or contract of insurance given in respect of an investment of an investor in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment of any right or claim of such investor to the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right and claim to the same extent as its predecessor in title.

## Article 9. Application of other Obligations

If the provisions of law of either Contracting Party or international obligations existing at present or established thereafter between the Contracting Parties in addition to the present Agreement, contain a rule, 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 rule shall to the extent that it is more favourable prevail over the present Agreement.

## Article 10. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any investment dispute between a Contracting Party and an investor of the other Contracting Party shall be settled by negotiation.

2. If a dispute under paragraph 1 of this Article cannot be settled within six (6) months of a written notification, the dispute shall be, upon the request of the investor, settled as follows:

a) By a competent court of the Contracting Party, or

b) By conciliation or arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington D.C. on March 18'h, 1965. In case of arbitration, each Contracting Party, by this Agreement irrevocably consents in advance, even in the absence of an individual arbitral agreement between the Contracting Party and the investor, to submit any such dispute to this Centre. This consent implies the renunciation of the requirement that the internal administrative or juridical remedies should be exhausted; or

c) By arbitration by three arbitrators in accordance with the UNCITRAL arbitration rules, as amended by the last amendment accepted by both Contracting Parties at the time of the request for initiation of the arbitration procedure. In case of arbitration, each Contracting Party, by this Agreement irrevocably consents in advance, even in the absence of an individual arbitral agreement between the Contracting Party and the investor, to submit any such dispute to the tribunal mentioned; or

d) By arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC).

3. The award shall be final and binding; it shall be executed according to the national law; each Contracting Party shall ensure the recognition and enforcement of the arbitral award in accordance with its relevant laws and regulations.

4. A Contracting Party which is a party to the dispute shall not, at any stage of conciliation or arbitration proceedings or enforcement of an award, raise the objection that the investor who is the other party to the dispute has received an indemnity by virtue of a guarantee in respect of all or a part of its losses.

## Article 11. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled

as far as possible by negotiation.

2. If a dispute according to paragraph 1 of this Article cannot be settled within six (6) months it shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal.

3. Such arbitral tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third State as their chairman. Such arbitrators shall be appointed within two (2) months from the date one Contracting Party has informed the other Contracting Party, of its intention to submit the dispute to an arbitral tribunal, the chairman of which shall be appointed within two (2) further months.

4. If the periods specified in paragraph 3 of this Article are not observed, either Contracting Party may, in the absence of any other relevant arrangement, invite 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 either of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-President or in case of his inability the member of the International Court of Justice next in seniority should be invited under the same conditions to make the necessary appointments.

5. The tribunal shall establish its own rules of procedure.

6. The arbitral tribunal shall reach its decision in virtue of the present Agreement and pursuant to the rules of international law. It shall reach its decision by a majority of votes; the decision shall be final and binding.

7. Each Contracting Party shall bear the costs of its own arbitrator and of its legal representation in the arbitration proceedings. The costs of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The tribunal may, however, in its award determine another distribution of costs.

## Article 12. Application of the Agreement

This Agreement shall apply to investments made prior to or after the entry into force of this Agreement, but shall not apply to any investment dispute that may have arisen before its entry into force.

## Article 13. Entry Into Force, Duration and Denunciation

1. This Agreement shall enter into force on the date of receipt of the later notification through diplomatic channels by which either Contracting Party notifies the other that its internal legal requirements for the entry into force of this Agreement have been fulfilled.

2. This Agreement shall remain in force for a period of ten (10) years and shall be extended thereafter for the following ten years 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. In that case, the denunciation shall become effective by the expiration of the current period of ten (10) years.

3. In respect of investments made prior to the date when the denunciation of this Agreement becomes effective, the provisions of this Agreement shall continue to be effective for the period of ten (10) years from the date of denunciation of this Agreement.

IN WITNESS WHEREOF, the undersigned representatives, duly authorised thereto, have signed the present Agreement.

Done in Zagreb on 26th June 2001 in two originals, in Croatian, Russian and English languages, all three texts being equally authentic. In a case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF CROATIA

FOR THE GOVERNMENT OF THE REPUBLIC OF BELARUS