

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

The Government of the Republic of Croatia and the Government of the Republic of Lithuania, hereinafter referred to as "the Contracting Parties",

- Desiring to intensify economic cooperation between the Contracting Parties,
- Determined to create mutually favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,
- Recognising that the promotion and protection of such investments will stimulate private business initiative and increase the prosperity of both countries,

Have agreed as follows:

## **Article 1. Definitions**

For the purpose of this Agreement:

1. The term "investment" shall mean 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 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 mortgages, liens and pledges, usufructs and similar rights,

b) Stocks, shares, bonds, debentures and other forms of participation in companies,

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

d) Intellectual property rights, in particular including but not limited to copyrights and neighbouring rights, industrial property rights (such as patents, trade marks, industrial designs and models, trade names, technical processes, trade secrets, rights in plants varieties) and know-how,

e) Goodwill,

f) Any right to conduct economic and commercial activities conferred by law or under contract, including concessions to search for, extract and exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their character as investment, provided such an alteration is made in accordance with the laws and regulations of the host Contracting Party.

2. The term "investor" shall mean in respect of either Contracting Party: a) Natural persons who are nationals of that Contracting Party according to its laws and regulations and persons without nationality permanently residing in that Contracting Party,

b) Any entity constituted under the laws and regulations of that Contracting Party.

3. The term "returns" shall mean all amounts yielded by an investment and in particular, though not exclusively, includes profits, capital gains, interest, dividends, royalties and fees.

4. The term "territory" shall mean the territory of the State of the Contracting Party, as well as those maritime areas adjacent to the outer limit of the territorial sea including the seabed and subsoil over which the respective State of the Contracting Party exercises, in accordance with international law, its sovereign rights and jurisdiction.

5. The term "laws and regulations" shall mean in respect of either Contracting Party the laws and regulations in force in the territory of that Contracting Party.

## **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. Upon the request by either Contracting Party, information shall be provided regarding the laws, regulations, decisions, administrative practices or procedures or policies of the other Contracting Party which may have impact on investment covered by this Agreement.
3. Each Contracting Party shall grant, whenever necessary, in accordance with its laws and regulations, without delay, the permits required in connection with the activities of consultants or experts engaged by investors of each Contracting Party.
4. Each Contracting Party shall, subject to its laws and regulations relating to the entry, stay and work of natural persons, examine in good faith and give due consideration, regardless of nationality, to requests of key personnel including top managerial and technical persons who are employed for the purposes of investments in its territory, to enter, remain temporarily and work in its territory.

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

1. Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by arbitrary, unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension or disposal of such investments.
2. Each Contracting Party shall in its territory accord investments or returns of investors of the other Contracting Party treatment no less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State, whichever is more favourable to the investor concerned.
3. Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment, or disposal of their investments, treatment not 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 concerned.
4. The provisions of the national treatment and most favoured nation treatment of this Article shall not apply to advantages accorded by a Contracting Party pursuant to its obligations as a member of a customs, economic or monetary union, a common market or a free trade area.
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 that Contracting Party's obligations as a member of a customs, economic or monetary union, a common market or a free trade area, arising out of an international agreement or reciprocity arrangement of that customs, economic or monetary union, common market or free trade area.
6. The treatment of the most favoured nation shall not apply to privileges which either Contracting Party accords to investors of a third State by virtue of any existing or future agreement on avoidance of double taxation or any other arrangement relating wholly or mainly to taxation.

## **Article 4. Expropriation**

1. Neither Contracting Party shall expropriate, nationalise or take measures having equivalent effect (hereinafter referred to as "expropriation") against investments of investors of the other Contracting Party, unless:
  - a) Such expropriation is in the public interest and under due process of law,
  - b) Such expropriation is carried out on a non-discriminatory basis, and
  - c) Prompt, adequate and effective compensation is given.
2. The compensation mentioned in point (c) of the paragraph (1) of this Article shall be equivalent to the market value of the expropriated investment immediately before the expropriation occurred or 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 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 authorities 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 one Contracting Party who suffer losses relating to their investments in the territory of the other Contracting Party due to war, a state of national emergency, insurrection, riot or other similar events, shall be accorded by the latter Contracting Party, treatment no less favourable than that which it 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 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 investment 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 free transfer into and out of its territory of payments related to an investment, in particular:

- a) Initial capital and additional amounts for the maintenance and extension or expansion of the investment,
- b) Returns,
- c) Proceeds from the sale or liquidation of all or any part of the investment,
- d) Funds in repayment of loans directly related to the investment,
- e) Compensation provided for in Articles 4 and 5,
- f) Payments under a guarantee or insurance contract referred to in Article 7,
- g) Earnings of personnel engaged from abroad in connection with an investment in its territory,
- h) Payments arising out of the settlement of an investment dispute under Article 8 of this Agreement.

2. Without prejudice to measure 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 if agreed upon by the investor, at the agreed applicable market rate of exchange prevailing on the date of transfer, and effected without undue delay.

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

## **Article 7. Subrogation**

If one Contracting Party or its designated agency ("the first Contracting Party") makes a payment under a guarantee or contract of insurance given in respect of an investment in the territory of the other Contracting Party ("the second Contracting Party"), the second Contracting Party shall 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 Investment Disputes**

1. Disputes between a Contracting Party and an investor of the other Contracting Party relating to an investment of the latter in the territory of the former shall, if possible, be settled amicably. In the event of a dispute the Contracting Party in whose territory the investment was made shall be notified in writing, including detailed information, by the investor.

2. If such a dispute cannot be settled amicably within six months from the date of the written notification provided in paragraph 1, investor shall be entitled to submit the dispute either to:

- A competent court of the Contracting Party in whose territory the investment is made,
- Arbitration by national commercial arbitration institutions of the Contracting Parties under the applicable arbitration rules,
- The International Center for the Settlement of Investment Disputes (ICSID) established under the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States for conciliation or arbitration under ICSID Rules of Procedure for Arbitration Proceedings, or
- To an ad hoc arbitral tribunal, established in accordance with the Arbitration Rules of United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree in writing to modify those Rules.

3. The awards of arbitration shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out such award without delay and once recognised in accordance with the laws and regulations of the respective Contracting Party, shall provide for its effective enforcement in its territory.

4. A Contracting Party which is a party to a 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 9. Settlement of Disputes between the Contracting Parties**

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by negotiations through the diplomatic channels.

2. If the Contracting Parties cannot reach an agreement within six months after the beginning of the dispute, the latter shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each case in the following way. Within two months from the date on which either Contracting Party receives from the other Contracting Party a request for arbitration, each Contracting Party shall appoint one arbitrator. These two arbitrators shall together, within a further two months period, select a third arbitrator who is a national of a third State. The third arbitrator, once approved by the two Contracting Parties, shall be appointed as Chairman of the arbitral tribunal.

4. If the arbitral tribunal has not been constituted within the periods specified in paragraph 3 of this Article, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of State of either Contracting Party, or is otherwise prevented from discharging this function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of State of either Contracting Party or if he also is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of State of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall determine its own procedure. The arbitral tribunal shall reach its decisions by a majority of votes. The decisions shall be final and binding upon each Contracting Party.

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

## **Article 10. More Favourable Provisions**

If the provisions of laws and regulations of either Contracting Party or international law entitle investors of the other Contracting Party or their investments to treatment more favourable than is provided for by this Agreement, such

provisions shall to the extent that they are more favourable prevail over this Agreement.

## **Article 11. Consultations**

Upon request by either Contracting Party, the other Contracting Party shall agree promptly to hold consultation on the interpretation or application of this Agreement.

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

This Agreement shall apply to the investments made in the territory of one of the Contracting Parties in accordance with its laws and regulations by investors of the other Contracting Party 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 a manner as may be agreed in writing between the Contracting Parties. Such amendments shall enter into force in accordance with the paragraph 1 of Article 14.

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

1. This Agreement shall enter into force on the date of receipt of the latter written notification through diplomatic channels by which one Contracting Party notifies the other Contracting Party 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. 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 denunciation to the other Contracting Party.
3. With respect to investments made prior to the effective date of denunciation of this Agreement, its provisions shall remain in force for a further period of ten (10) years from such date.

Done at .....on.....in two originals, each in the Croatian, Lithuanian and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of the Republic of CroatiaFor the Government of the Republic of Lithuania