

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

The Government of Slovak Republic and the Government of the Republic of Croatia (hereinafter referred to 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,

Recognising 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 purposes 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 property rights such as mortgages, liens, pledges, and similar rights,
- b) Shares, stocks and debentures or any other form of participation in the equity of companies or joint ventures, as well as rights relating to them,
- c) Claims to money or to any performance having an economic value,
- d) Intellectual property rights, in particular, literary and artistic works, including sound recordings, inventions in all fields of human endeavour, semiconductor mask works, copyrights, trademarks, patents, industrial designs and models, trademark rights, trade names, business secrets, technical processes, know-how and goodwill,
- e) Concessions pursuant to law or issued in accordance with the decision of the appropriate state authority, including the concessions for prospect, research, cultivate or exploit natural resources,

Any alteration of 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.

2. The term "investor" shall mean any natural or legal person of either Contracting Party who invests in territory of the other Contracting Party:

- a) The term "natural persons" shall mean any natural person having the nationality of either Contracting Party, in accordance with its laws and regulations,
- b) The term "legal person" shall mean with respect to either Contracting Party, any entity incorporated or constituted in accordance with, and recognised as a legal person by its laws, having permanent residence in the territory of one of the Contracting Parties.

3. The term "returns" means all amounts yielded by an investment, and in particular, though not exclusively, profits, interest,

capital gains, dividends, royalties, or other fees.

4. The term "territory" shall mean:

- In relation to the Slovak Republic the land over which it exercises its sovereignty, sovereign rights and jurisdiction in accordance with international law,

- In relation to the Republic of Croatia the land and maritime areas, including the seabed and subsoil adjacent to the outer of the territorial sea over which it exercises its sovereignty, sovereign rights and jurisdiction in accordance with international law.

Article 2. Promotion and Protection of Investments

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

2. When any 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 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.

Article 3. National and Most-favoured-nation Treatment

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 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 its own investors or by investors of the most favoured nation, if this latter treatment is more favourable.

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.

Article 4. Expropriation

1. Neither 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 (hereinafter only "expropriation"), unless the measures are taken for a public purpose on a non-discriminatory basis and under due process of law and provided that provisions are 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 became public knowledge and shall include interest from the date of expropriation to the date of payment.

The amount of compensation shall be settled in the convertible currency and be freely transferable and paid without undue delay to the person entitled thereto without regard to its residence or domicile. 2. The investors effected shall have the right, to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.

Article 5. Compensation for Losses

1. Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to expropriation, nationalization or any other measures having the same nature or 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 not less favourable than that accorded to its own investors or to investors of any Third State. Any payments realized in accordance with this Article shall be made without delay and shall be freely transferable in freely convertible currency.

Article 6. Transfers

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 amounts relating to these investments and returns, such as:

- a) The capital and additional amounts necessary for the maintenance and development of the investment,
- b) Profits, defined in Article 1 paragraph 2 of this Agreement,
- c) Funds for managing and amortisation of loans, accepted as investments by both Contracting Parties,
- d) Royalties and fees,
- e) The proceeds from a total or partial sale or from a total or partial liquidation of an investment,
- f) Compensations provided in Article 5,
- g) The earnings of nationals of one Contracting Party who are entitled to work in connection with an investment in the territory of the other Contracting Party.

2. Transfers shall be effected without delay in a freely convertible currency in the market rate of exchange applicable on the date of the transfer, in accordance with the procedures established by the Contracting Party in whose territory the investment was made.

Article 7. Subrogation

1. If a Contracting Party or its designated agency makes any payment to its own investors under a guarantee it has accorded in respect of an investment in the territory of the other Contracting Party, the former Contracting Party shall be subrogated to the rights and obligations of the investor. The subrogated rights or obligations shall not exceed the original rights or obligations of the investor.

Article 8. Settlement of Investment 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. Any dispute shall be subject to the negotiations of the Parties in dispute.

2. If these disputes cannot be settled in this way within six months from the date of the written notification mentioned in paragraph 1, either of the parties in dispute shall be entitled to submit the dispute to any of the following bodies:

- a) A competent Court of Justice of the Contracting Party,
- b) An ad hoc court of arbitration established under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law, or
- c) The International Center for Settlement of Investment Disputes (ICSID) set up by the "Convention on Settlement of Investment Disputes between States and Nationals of other States", opened for signature at Washington, D.C. on March 18, 1965, in case both Contracting Parties have become signatories of this Convention.

3. Neither Contracting Party shall pursue through diplomatic channels any dispute submitted to arbitration unless the binding decision of the Arbitral Tribunal has been made.

4. The arbitration decisions shall be final and binding for both Contracting Parties in dispute. Each Contracting Party shall carry out without delay any such decision and such decision shall be enforced in accordance with domestic law.

Article 9. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through diplomatic channels.

2. If the dispute cannot be thus settled within six months from the beginning of the negotiations, it shall upon the request of either Contracting Party, be submitted to an Arbitral Tribunal in accordance with the provisions of this Article.

3. The Arbitral Tribunal shall be constituted for each individual case in the following way:

Within two months of the written receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. These two members shall then select a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal (hereinafter referred to as the "Chairman"). The Chairman shall be appointed within three months from the date on which one Contracting Party notified the other Contracting Party of its decision to submit the dispute to the Arbitral Tribunal. 4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, a written request may be made to the President of the International Court of Justice to make the appointments. If he is a national of either Contracting Party, or if he is otherwise prevented from taking upon the said function, the Vice – President shall be invited to make the appointments. If the Vice – President also is a national of either Contracting Party or is prevented from taking upon 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 appointments.

5. Chairman of the Arbitral Tribunal shall be a national of a third State, which both Contracting Parties maintain diplomatic relations with.

6. The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding for both Contracting Parties. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings; both Contracting Parties shall assume an equal share of the expenses incurred by the Chairman, as well as any other expenses. The Arbitral Tribunal shall determine its own procedure.

Article 10. Application of other Rules

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

Article 11. Consultations and Exchange of Information

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 made by either Contracting Party, information shall be exchanged on the impact that laws, regulations, or other measures of other Contracting Party may have on investments covered by this Agreement.

Article 12. Applicability of this Agreement

The provisions of this Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations, prior or after its entry into force, but they shall not apply to any dispute arisen before its entry into force.

Article 13. Entry Into Force, Duration and Termination

1. 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.

2. This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, one year before its expiration or any subsequent five-year period, either Contracting Party notifies the other in writing of its intention to terminate the Agreement.

3. In respect of investments made prior to the termination of this Agreement, the provisions of this Agreement shall remain in force for a further period of ten years from the date of termination of this Agreement.

IN WITNES WHEREOF, the undersigned duly authorized have signed this Agreement.

DONE in two originals at Zagreb, this February 12, 1996 in the Slovak, Croatian and English languages, all text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Slovak Republic

For the Republic of Croatia