

# **A G R E E M E N T BETWEEN THE SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA AND THE REPUBLIC OF CROATIA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENT**

The Socialist People's Libyan Arab Jamahiriya and the Republic of Croatia (hereinafter referred to the as: "Contracting Parties"):

DESIRING to create encouraging conditions for the development of mutual economic cooperation and in particular the investments, made by investors of one Contracting Party in the territory of the other Contracting Party,

RECOGNIZING that promotion and reciprocal protection of investments, will be incentive in promoting economic cooperation between the two countries,

Have agreed as follows:

## **Article 1. Definitions**

For the purpose of this Agreement the following terms mean:

### 1. "Investment"

All types of assets owned and invested by an investor of one Contracting Party, invested in the territory of the other Contracting Party in accordance with the laws and regulations of the latter and in particular, though not exclusively, shall include:

- a) Ownership of property rights on movable and immovable property and any other rights in rem, such as real estate, mortgage, liens and pledges;
- b) Shares in and stocks and debentures as well as other kinds of securities of a company and any other form of participation in a company;
- c) Claims to money or any other claim under contract having an economic value related to the investment;
- d) Intellectual property rights, as defined in the multilateral agreements concluded under the auspices of the World Intellectual Property Organization, in as far as both Contracting Parties are parties to them, including, but not limited to, industrial property rights, copyrights and neighbouring rights, trademarks, patents, industrial design and technical processes, rights in plants varieties, know-how, trade secrets, trade names and goodwill;
- e) Any rights granted under law of contract or license or permission, including natural resources exploration, extraction and exploitation.

Any change in the form in which assets are invested or reinvested will not affect their character as investments.

2. "Investor" any natural person having the nationality of that Contracting Party in accordance with its laws; legal entity incorporated, constituted or otherwise duly organized in accordance with the laws and regulations of one Contracting Party, having its headquarters and performing real business activity in the territory of that Contracting Party.a) Any natural person having the nationality of that Contracting Party in accordance with its laws;

b) Legal entity incorporated, constituted or otherwise duly organized in accordance with the laws and regulations of one Contracting Party, having its headquarters and performing real business activity in the territory of that Contracting Party.

3. "Territory": in the case of the Socialist People's Libyan Arab Jamahiriya and in the case of the area encompassed by land boundaries as well as sea, seabed and its subsoil beyond the territorial sea over which the Contracting Parties exercise, in accordance with its national laws and regulations and international law, sovereign rights or jurisdiction;- In the case of the

Socialist People's Libyan Arab Jamahiriya and in the case of the area encompassed by land boundaries as well as sea, seabed and its subsoil beyond the territorial sea over which the Contracting Parties exercise, in accordance with its national laws and regulations and international law, sovereign rights or jurisdiction;

- 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.

#### 4. "Returns"

Amounts yielded by an investment, and includes profits, interest, dividend, capital gains, royalties, fees and all related proceeds.

#### 5. "Freely convertible currency"

Any currency that the International Monetary Fund determines as freely usable currency in accordance with Agreement of the International Monetary Fund.

#### 6. "Without delay"

Such period which is normally required for the completion of necessary formalities for the transfer of payments. The said period shall commence on the day which the request for transfer has been submitted and may on no account exceed three (3) months.

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

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

2. Each Contracting Party shall accord at all times fair and equitable treatment to investments of investors of the other Contracting Party and their returns;

3. Investments made by investments of either Contracting Party shall enjoy full legal protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments of investors of the other Contracting party in its territory.

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 temporary and work in its territory. Immediate family members of such key personnel shall also be granted similar treatment with regard to the entry and temporary stay in the host Contracting Party.

5. Each Contracting Party shall extend in its territory full legal protection and security to investments and returns of investors of the Contracting Party. Neither Contracting Party shall hamper, by arbitrary or discriminatory measures, the development, management, maintenance, use, enjoyment, expansion, sale and if 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 the other Contracting Party.

6. Investments or returns of investors 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 3. National Treatment and Most Favored Nation Treatment**

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party, or returns related hereto, shall be accord treatment which is fair and equitable and no less favorable than that which the latter Contracting Party accords to the investments and returns of its own investors or investors of any third State;

2. Investors of one Contracting Party shall be accorded by the other Contracting Party, as regards the management, maintenance, use, enjoyment, or disposal of their investments and returns, treatment which is fair and equitable and no less favorable than that which the latter Contracting Party accords to its own investors or to investors of any third State;

3. The provisions of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party, or to their investments, the benefit of any treatment, preference or privilege by virtue of:

- a) Any existing or future membership in economic or custom union, free trade zone, common market, international agreement, or any form of regional economic organization;
- b) Any bilateral or international agreement or arrangement relating wholly or mainly to taxation.

#### **Article 4. 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 this Agreement, contain a rule, whether general or specific, entitling investments by investors of the Contracting Party to a treatment more favorable than is provided for by this Agreement, such rule shall to the extent that it is more favorable prevail over this Agreement.

#### **Article 5. Compensation for Loss**

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favorable than that which the latter Contracting Party accords to its own investors or to investors of any third state. Resulting payments shall be in freely convertible currency and shall be freely transferable without delay.

2. Without prejudice to 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 property by the authorities of the other Contracting Party, or
- b) Destruction of their property by the authorities of the other Contracting Party, which was not caused in combat action or was not required by the necessity of the situation, shall be accorded restitution or adequate compensation.

#### **Article 6. Transfer**

1. Each Contracting Party guarantee to the investors of the other Contracting Party free transfer of payments into or out of its territory in the freely convertible currency without delay and shall include, in particular, though not exclusively:

- a) Initial capital and any additional capital for the maintenance, management and development of the investment;
- b) Returns;
- c) Funds in repayment of loans;
- d) Proceeds from the sale or liquidation of the whole or any part of the investment;
- e) Compensations provided under Article 5 of this Agreement;
- f) Compensation under Article 7 of this Agreement;
- g) Earnings of employees in connection with the investments;
- h) Payments referred to Articles 8, 9 and 10 of this Agreement.

2. Payments under paragraph 1 of this Article will be made in a freely convertible currency at the market rate of exchange prevailing on the date of transfer.

#### **Article 7. Expropriation**

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as: "expropriation") in the territory of the other Contracting Party except in the public interest. The expropriation shall be carried out under due process of law and against prompt, effective and adequate compensation.

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation occurred. The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier.
3. Such market value shall be calculated in a freely convertible currency at the market rate of exchange prevailing for that currency on the valuation date. Compensation shall include interest calculated on the six (6) month LIBOR rate applicable on the date of expropriation, from the date of expropriation until the date of payment. Compensation shall be paid without delay, shall be freely transferable and effectively realisable.
4. The investor whose investments are expropriated shall have the right under the law of the Contracting Party, to prompt review, by a judicial or other competent authority of that Contracting Party, of its case, and to valuation of its investments and payment in accordance with the principles set out in this Article.

## **Article 8. Subrogation**

1. If a compensation is paid to an investor of a Contracting Party in accordance to a guarantee given in regard to an investment established in the territory of the other Contracting Party, the other Contracting Party must acknowledge the assignment made by the investor who has been compensated for all his rights and claims or part thereof to the assignee under a law or a legal agreement;
2. The assignee or his substitute may exercise such rights and execute such claims in accordance to the role of substituting the first Contracting Party with the same amount of the compensation made to the investor;
3. Subrogation of the rights and obligations of the indemnified investor shall also apply to the transfer of payments effected in accordance with Article 6 of this Agreement.

## **Article 9. Settlement of Investment Disputes between 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 negotiations.
2. If any 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) To arbitration in accordance with this Article under: the Convention on the Settlement of Investments Disputes between States and Nationals of other States ("ICSID Convention"), opened for signature in Washington on March 18th, 1965, if the ICSID Convention is available; or the Additional Facility Rules of the International Centre for Settlement of Investment Disputes ("ICSID Additional Facility"), if the ICSID Additional Facility is available; or the Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL"); or the Rules of Arbitration of the International Chamber of Commerce ("ICC").
    - (i) The Convention on the Settlement of Investments Disputes between States and Nationals of other States ("ICSID Convention"), opened for signature in Washington on March 18th, 1965, if the ICSID Convention is available; or
    - (ii) The Additional Facility Rules of the International Centre for Settlement of Investment Disputes ("ICSID Additional Facility"), if the ICSID Additional Facility is available; or
    - (iii) The Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL"); or
    - (iv) The Rules of Arbitration of the International Chamber of Commerce ("ICC").
3. The consent given by Contracting Party under paragraph 2, together with either the written submission of the dispute to resolution by the investor or the investor's advance written consent to such submission, shall constitute the written consent and the written agreement of the parties to the dispute to its submission for settlement for the purposes of Chapter 11 of the ICSID Convention, the ICSID Additional Facility Rules, Article 1 of the UNCITRAL Arbitration Rules, the Rules of Arbitration of the ICC.
4. 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 other regulations.
5. A Contracting Party which is a party to a dispute shall not, at any stage of conciliation or arbitration proceedings or enforcement of any 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 10. Settlement of Disputes between the Contracting Parties**

1. As far as possible the disputes arising from the interpretation or application of this Agreement between the Contracting Parties shall be settled by negotiations.

2. If the dispute is not settled within six (6) months from the date of notifying the other Contracting Party in writing, the dispute shall be submitted for arbitration on the request of one of the Contracting Parties.

3. The arbitration tribunal shall be formed as follows:

Each Contracting Party shall assign an arbitrator and the two arbitrators shall appoint a third arbitrator from one country to act as a chairman. The two arbitrators shall be appointed within three (3) months and the chairman shall be appointed within five (5) months from the date of notification of the Contracting Party to the other; 4. If one of the Contracting Parties did not respect the periods specified in paragraph 3 above, it shall contact the chairman of the International Court of Justice to appoint the arbitrators. If the said chairman is a national of one of the Contracting parties or if there is any reason hindering him to execute this job, his assistant next in seniority shall be assigned to execute this job.

5. The arbitrators shall take their decision in accordance with the provisions of this Agreement and the regulations of the international law. The decisions shall be taken by the majority of votes and shall be final and binding both Contracting Parties.

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

7. Each Contracting Party shall bear the costs of its own member 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 arbitral tribunal shall decide on the final payment of the costs, taking into account the adjudication of the dispute and the responsibility for the occurrence of these costs.

## **Article 11. Application of the Agreement**

This Agreement shall apply to investments made after its entry into force and shall by no means be applied to the investments made prior to its entry into force.

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

1. This Agreement shall enter into force on the date of receipt of the latter notification through diplomatic channels by which either 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 and shall be extended thereafter for following ten (10) years period unless, one (1) 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 notice of denunciation shall become effective by the expiration of current period of ten (10) years.

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

Done in \_\_\_\_\_ on \_\_\_\_\_ in two original versions in Arabic, Croatian and English languages, all three texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE SOCIALIST PEOPLE'S FOR

LIBYAN ARAB JAMAHIRIYA THE REPUBLIC OF CROATIA