

# **AGREEMENT BETWEEN BOSNIA AND HERZEGOVINA AND THE REPUBLIC OF INDIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS**

The Republic of India and Bosnia and Herzegovina (hereinafter referred to as the "Contracting Parties");

Desiring to extend and intensify the economic co-operation between the Contracting Parties on the basis of equality and mutual benefit;

Desiring to create conditions favourable for fostering greater investment by investors of one Contracting Party in the territory of the other Contracting Party;

Recognising that the encouragement and reciprocal protection under international agreement of such investment will be conducive to the stimulation of individual business initiative and will increase prosperity in both Contracting Parties;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. "investment" means every kind of asset established or acquired, including changes in the form of such investment, in accordance with the national laws of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes:
  - a) Movable and immovable property as well as other rights such as mortgages, liens or pledges;
  - b) Shares in and stock and debentures of a company and any other similar forms of participation in a company;
  - c) Rights to money or to any performance under contract having a financial value;
  - d) Intellectual property rights, such as copyrights and related rights, patents, industrial designs, trademarks, trade names and know-how;
  - e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract and exploit natural resources;
2. "investor" means any national or company of a Contracting Party:
  - 2.1 "national" means:
    - a) In respect of India: any person deriving her/his status as Indian national from the law in force in India;
    - b) In respect of Bosnia and Herzegovina: any physical person deriving her/his status as Bosnia and Herzegovina citizen from the law in force in Bosnia and Herzegovina if she/he has permanent residence or main place of business in Bosnia and Herzegovina;
  - 2.2 "company" means:
    - a) In respect of India: any corporation, firm or association incorporated or constituted or established under the law in force in any part of India;
    - b) In respect of Bosnia and Herzegovina: any legal person established in accordance with the laws in force in Bosnia and Herzegovina, which has its registered seat, central management or main place of business in the territory of Bosnia and Herzegovina.
3. "returns" means the monetary amounts yielded by an investment such as profit, interest, capital gains, dividends, royalties, licence fees and other fees;
4. "territory" means:
  - a) In respect of India: the territory of the Republic of India including its territorial waters and the

airspace above it and other maritime zones including the Exclusive Economic Zone and continental shelf over which the Republic of India has sovereignty, sovereign rights or exclusive jurisdiction in accordance with its laws in force, the 1982 United Nations Convention on the Law of the Sea and International Law.

b) In respect of Bosnia and Herzegovina: all land territory of Bosnia and Herzegovina, its territorial sea, whole bed and subsoil and air space above, including any maritime area situated beyond the territorial sea of Bosnia and Herzegovina which has been or might in the future be designated under the law of Bosnia and Herzegovina in accordance with international law as an area within which Bosnia and Herzegovina may exercise rights with regard to the seabed and subsoil and the natural resources.

## **Article 2. Scope of the Agreement**

This Agreement shall apply to future investments made by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's laws and regulations, and also to investments existing on the date of entry into force of this Agreement, in accordance with the laws and regulations of the Contracting Party in the territory of which the investment has been made. However, the provisions of this Agreement shall not apply to claims arising out of events which occurred, or to claims which had been settled prior to its entry into force.

## **Article 3. Promotion and Protection 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 admit such investments in accordance with its relevant laws.
2. Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party.

## **Article 4. National Treatment and Most-favoured-nation Treatment**

1. Each Contracting Party shall accord in its territory to investments and returns of investors of the other Contracting Party, treatment which shall not be less favourable than that accorded either to investments and returns of its own investors or investments and returns of investors of any third State, whichever is more favourable.
2. Each Contracting Party shall accord in its territory to investors of the other Contracting Party, as regards the expansion (to the extent the laws of the Contracting Party concerned permit), management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable.
3. The provisions of paragraphs 1 and 2 above 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 investors of any third State resulting from:
  - a) Any existing or future customs union, free trade area, economic union or similar international agreement to which it is or may become a party, or
  - b) Agreements on avoidance of double taxation or any other international arrangements pertaining wholly or mainly to taxation.

## **Article 5. Expropriation**

1. Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose in accordance with law on a nondiscriminatory basis and against fair and equitable compensation. Such compensation shall amount to the genuine value of the investment expropriated immediately before the expropriation or before impending expropriation became public knowledge, whichever is the earlier, shall include interest at a normal commercial rate for current transactions from the date of expropriation until the date of payment, shall be made without unreasonable delay, be effectively realizable and be freely transferable.
2. The investor affected shall have a right, under the law of Contracting Party making the expropriation, to review, by judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in paragraph 1 of this Article. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.

3. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph 1 of this Article are applied to the extent necessary to ensure fair and equitable compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

## **Article 6. Compensation for Losses**

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 or civil disturbances or other similar events 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 favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable.

## **Article 7. Repatriation of Investment**

1. Each Contracting Party shall permit all funds of an investor of the other Contracting Party related to an investment in its territory to be freely transferred, without unreasonable delay and on a non-discriminatory basis. Such funds may include:

- a) Capital and additional capital amounts used to maintain and increase investments;
- b) Net operating profits including dividends and interest in proportion to their share holdings;
- c) Repayment of any loan including interest thereon, relating to the investment;
- d) Payment of royalties and services fees relating to the investment;
- e) Proceeds from sales of their shares;
- f) Proceeds received by investors in case of sale or partial sale or liquidation;
- g) Payments arising out of the settlement of disputes;
- h) The earnings of nationals of one Contracting Party who work in connection with investment in the territory of the other Contracting Party.

2. Nothing in paragraph 1 of this Article shall affect the transfer of any compensation under Articles 5 and 6 of this Agreement.

3. Unless otherwise agreed to between the parties, currency transfer under paragraph 1 of this Article shall be permitted in the currency of the original investment or any other convertible currency. Such transfer shall be made at the prevailing market rate of exchange on the date of transfer.

4. The Contracting Parties undertake to accord to such transfers a treatment no less favourable than that accorded to transfers originating from investments made by investors of any third State.

## **Article 8. Subrogation**

1. If a Contracting Party or its designated agency makes a legal payment to any of its investors under a guarantee or a contract of insurance against non-commercial risks in respect of an investment, the other Contracting Party shall recognise, without prejudice to the rights of the Contracting Party concerned under Article 10 of this Agreement, the validity of the subrogation in favour of the former Contracting Party or its agency to any right or title held by the investor.

2. The Contracting Party or its agency that is subrogated in the rights of an investor shall be, in all circumstances, entitled to the same rights and the same treatment as those of the indemnified investor and payments due pursuant to those rights.

3. In the case of subrogation as defined in paragraph 1 of this Article, the investor shall not sue or pursue a claim unless authorised to do so by the Contracting Party or its agency.

## **Article 9. Settlement of Disputes between an Investor and a Contracting Party**

1. Any dispute between an investor of one Contracting Party and the other Contracting Party in relation to an investment of the former under this Agreement shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

2. Any such dispute which has not been amicably settled within a period of six months, from the date on which either party to the dispute requested amicable settlement, if investor concerned agrees, may be submitted:

a) For resolution, in accordance with the law of the Contracting Party which has admitted the investment to that Contracting Party's competent judicial, arbitral or administrative bodies; or

b) To international conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law.

3. Should the investor choose not to invoke the dispute settlement procedure provided under paragraph 2 of this Article or where a dispute is referred to conciliation but conciliation proceedings are terminated other than by signing of a settlement agreement, the dispute may be referred to arbitration. The arbitration procedure shall be as follows:

3.1 If the Contracting Party of the investor and the other Contracting Party are both parties to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, 1965 (hereinafter referred to as: "ICSID Convention") and the investor consents in writing to submit the dispute to the International Centre for the Settlement of Investment Disputes (hereinafter referred to as: "Centre"), such a dispute shall be referred to the Centre; or

3.2 If both parties to the dispute so agree, under the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings; or

3.3 To an ad hoc arbitral tribunal by either party to the dispute in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, 1976 (UNCITRAL), subject to the following modifications: a) The appointing authority under Article 7 of the UNCITRAL Rules shall be the President, the Vice-President or the next senior Judge of the International Court of Justice, who is not a national of either Contracting Party. The third arbitrator shall not be a national of either Contracting Party.

b) The parties shall appoint their respective arbitrators within two months from the date of notification by one party to the other party of its intention to submit the dispute to the UNCITRAL arbitration.

c) The arbitration award shall be made in accordance with: - The provisions of this Agreement,

- Laws and rules of the Contracting Party in whose territory the investment has been made,

And shall be binding on both parties in dispute.

d) The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.

4. A company which is incorporated or constituted under the laws in force in the territory of one Contracting Party and in which before such dispute arises the majority of shares are owned by investors of the other Contracting Party, shall for the purpose of Article 25 (2) (b) of the ICSID Convention be treated as the company of the other Contracting Party.

5. Neither Contracting Party shall pursue through the diplomatic channels any dispute referred to the Centre unless:

a) The Secretary-General of the Centre, or a conciliation commission or an arbitral tribunal constituted by the Centre, decides that the dispute is not within the jurisdiction of the Centre; or

b) The other Contracting Party fails to abide by or to comply with any award rendered by an arbitral tribunal.

6. During the arbitral or execution proceedings neither Contracting Party shall assert as a defence, objection, counterclaim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received by investor who is a contending party, pursuant to an insurance or guarantee contract against political risks.

## **Article 10. Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, as far as possible, be settled through negotiation.

2. If a dispute between the Contracting Parties cannot thus be settled within six months from the time the dispute arose, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the resident of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging 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 necessary appointments.

5. The arbitral tribunal shall reach its decision by a majority of votes. Such decisions shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedures.

6. A dispute shall not be submitted to an international arbitral tribunal under the provisions of this Article, if the same dispute has been brought before another international arbitration tribunal under the provisions of Article 9 and is still before the tribunal. This shall not impair the possibility of dispute settlement in accordance with paragraph 1 of this Article.

## **Article 11. Entry and Sojourn of Personnel**

A Contracting Party shall, subject to its laws applicable from time to time relating to the entry and sojourn of non-citizens, permit natural persons of the other Contracting Party to enter and remain in its territory for the purpose of engaging in activities connected with investments.

## **Article 12. Exceptions**

The provision of this Agreement shall not in any way limit the right of either Contracting Party in cases of extreme emergency to take action in accordance with its laws applied in good faith, on non-discriminatory basis by giving the same treatment to all investors in the like situations, and only to the extent and duration necessary for the protection of its essential security interests, or for the prevention of diseases and pests in animals and plants.

## **Article 13. Application of other Rules**

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, 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 rules shall to the extent that they are more favourable prevail over the present Agreement.

## **Article 14. Entry Into Force**

This Agreement shall be subject to ratification and shall enter into force on the date of exchange of Instruments of Ratification.

## **Article 15. Duration and Termination**

1. This Agreement shall remain in force for a period of ten years and thereafter it shall be deemed to have been automatically extended unless either Contracting Party gives to the other Contracting Party a written notice of its intention to terminate the Agreement. The Agreement shall stand terminated one year from the date of receipt of such written notice.

2. Notwithstanding termination of this Agreement pursuant to paragraph 1 of this Article, the Agreement shall continue to be effective for a further period of fifteen years from the date of its termination in respect of investments made or acquired before the date of termination of this Agreement.

3. This Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall enter into force under the same procedure required for entering into force of the present Agreement.

4. This Agreement shall be applied irrespective of whether or not the Contracting Parties have diplomatic or consular relations.

In witness whereof the undersigned representatives, duly authorised thereto, have signed this Agreement.

Done at New Delhi on this 12th day of September 2006 in two originals, each in the Hindi, Bosnian, Croatian, Serbian and English languages, all original texts being authoritative. In case of any divergence of interpretation, the English text shall prevail.

For the Republic of India For Bosnia and Herzegovina

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(Ashok Jha) Secretary Department of Economic Affairs Ministry of Finance (Slobodan Ecimovic)

Deputy Minister of Foreign

Trade and Economic Relations