

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

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

Bearing in mind the friendly and cooperative relations existing between the two countries and their peoples;

Desiring to promote greater economic cooperation, with respect to investments 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 investments will stimulate the flow of private capital and the economic development of the Contracting Parties;

Agreeing that a stable framework for investments will maximize effective utilization of economic resources and increase prosperity;

Have agreed as follows;

## **Article 1.**

### DEFINITIONS

For the purposes of the Agreement;

1. The term investments means every kind of asset established or acquired 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 in rem such as mortgages, liens, pledges, usufructs and other similar rights;

b) rights derived from stock, shares, debentures and other forms of participation in companies;

c) claims to money or to any performance having economic value;

d) intellectual property rights including, but not limited to, copyrights and neighboring rights, industrial property rights, trademarks, patents, industrial design 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 law and by virtue of a contract, including concessions to search for, cultivate, extract or exploit natural resources;

Any change of the form in which asset is invested or reinvested shall not affect its character as

An investment;

2. The term investor means in respect of either Contracting Party;

a) a natural person, a national of a Contracting Party who makes an investment in the territory of the other Contracting Party;

b) a legal person incorporated, constituted or otherwise duly organized 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;

3. The term returns means income deriving from an investment and includes, in particular though not exclusively, profits, dividends, interests, capital gains, royalties, patents license fees, and other fees. Reinvested returns shall enjoy the same treatment as the original investment.

4. The term "without delay shall mean 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 on no account exceed one month.

5. The term "freely convertible currency shall mean 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:

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.

With respect to the Republic of Indonesia:

The territory of the Republic of Indonesia as defined in its laws including part of the continental shelf and adjacent seas over which the Republic of Indonesia has sovereignty, sovereign rights or jurisdiction in accordance with the provisions of the United Nations Convention on the Law of the Sea 1982.

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

1. Each Contracting Party shall encourage and create favorable 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 endeavor 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, within the framework of its legislation, permits in connection with the investment in its territory, including authorizations for engaging top managerial and technical personnel of their choice, regardless of nationality.

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 adequate protection and security to investments and returns of investors of the other Contracting Party. Neither Contracting Party shall hamper, by arbitrary, 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 specific 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.

3. Each Contracting Party shall not impose in its territory mandatory measures on investments by investors of the other Contracting Party concerning purchase of materials, mean of production, operation, transport, marketing of its products or similar orders having discriminatory effects.

## **Article 4. Most Favored Nation Treatment**

1. Each Contracting Party shall accord in its territory to investments and returns of investors of the other Contracting Party a treatment not less favorable than that which it accords to investments and returns of any third State.

2. Each 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 not less favorable than that which it accords to investors of any third State.

3. The provisions of paragraph 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 Contracting Party 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 agreement,
- b) any international agreement or arrangement, completely or partially related to taxation, to which either of the Contracting Party is or may become a Party in the future.

## **Article 5. Expropriation**

1. A Contracting Party shall not expropriate or nationalize directly or indirectly an investment in its territory 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.

3. Such compensation shall amount to the fair market value of the expropriated investment at the time immediately before the expropriation was taken or became publicly known, whichever is earlier.

4. Such fair market value shall be expressed in a freely convertible currency on the basis of the market rate of exchange existing for that currency at the moment referred to in paragraph 2 of this Article. Compensation shall also include interest at a commercial rate established on a market basis for the currency in question from the date of expropriation until the date of actual payment.

5. The investors, whose investments are expropriated, shall have the right to prompt review of its case by a judicial or other competent authority of that Contracting Party, valuation of its investments and payment of compensation in accordance with the principles set out in this Article.

## **Article 6. Compensation for Damage or Loss**

1. When investments made by investors of either Contracting Party suffer loss or damage owing to war or other armed conflict which is not a result of the activities of the Contracting Party to which the investors belong, civil disturbances, revolution, riot or similar events in the territory of the latter Contracting Party, they shall be accorded by the latter Contracting Party, treatment, as regards restitution, indemnification, compensation or any other settlement, not less favorable than that that the latter Contracting Party accords to its own investors or to investors of any third State, whichever is more favorable to the investors concerned.

2. Without prejudice to paragraph 1 of this Article, an investor of a Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in the territory of another Contracting Party resulting from:

- a) requisitioning of its investment or part thereof by the latter's authorities, or;
- b) destruction of its investment or part thereof by the latter's authorities, which was not required by the necessity of the situation,

Shall be accorded restitution and where applicable compensation, which in either case shall be prompt, adequate and effective.

3. Investors whose investments suffer damage or loss in accordance with paragraph 2 of this Article, shall have the right to prompt review of its case by a judicial or other competent authority of that Contracting Party.

## **Article 7. Transfers**

1. Each Contracting Party shall ensure that all payments relating to an investment in its territory of an investor of the other Contracting Party may be freely transferred into and out of its territory without delay. Such transfers shall include, in particular, though not exclusively:

- a) the initial capital and additional amounts to maintain or increase an investment;
- b) returns;
- c) the amounts required for payment of expenses which arise from the operation of the investment under contract, loan repayments, payment of royalties, management fees, license fees or other similar expenses;
- d) proceeds from the sale or liquidation of all or any part of an investment;
- e) payments of compensation under Article 5 and 6 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 shall be made in a freely convertible currency at the rate applicable on the day transfers are made to spot transactions in the currency used.

3. Each Contracting Party shall ensure that the interest at the commercial rate established on the market basis for the currency in question is calculated together with compensation for the period starting from the occurrence of events under Articles 5 and 6 until the date of transfer of payment and payment will be effected in accordance with provisions of paragraph 1 of this Article.

4. Each Contracting Party shall ensure that the transfers will be made without delay, with no other expenses than the usual taxes and costs.

## **Article 8. Subrogation**

If a Contracting Party or its designated agency makes a payment under an indemnity, guarantee of 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 recognize the assignment of any right or claim of such investor to the former Contracting Party or its designated agency and the right of 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 More Favorable Rules**

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 favorable than is provided for by the present Agreement, such rule shall, to the extent that it is more favorable, 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 negotiations.

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 Investments Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for

signature in Washington on March 18 th, 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 judicial remedies should be exhausted; or

c) by an ad hoc arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). 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.

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 other regulations.

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 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 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 tribunal may, however, in its award determine another distribution of costs.

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

1. 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 or any claim, which was settled before its entry into force.

2. This Agreement shall apply to investments by investors of the Republic of Croatia in the territory of the Republic of Indonesia which have been previously granted admission in accordance with the Law No. 1 of 1967 concerning Foreign Investment and any law amending or replacing it.

## **Article 13. Consultations and Amendments**

1. Either Contracting Party may request that consultations be held on any matter concerning this Agreement. The other Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

2. This Agreement may be amended at any time, if deemed necessary, by mutual consent of both Contracting Parties.

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

1. This Agreement shall enter into force on the thirtieth day following the date of receipt of the later 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 and shall be extended thereafter for the following ten (10) year periods unless, one year before the expiration of the initial or any subsequent period, one Contracting Party notifies the other Contracting Party through diplomatic channels of its intention to denounce the Agreement. In that case, the Agreement shall be terminated by the expiration of current period of ten (10) years.
3. In respect of investment made prior to the date of termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten (10) years from the date of termination of this Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorized by their respective Governments, have signed the present Agreement.

DONE at, on 10 th September 2002, in two originals, each in the Croatian, Indonesian and

English languages, all texts being equally authentic. The text in the English language shall prevail in case of difference of interpretation.

FOR THE GOVERNMENT OF FOR THE GOVERNMENT OF

THE REPUBLIC OF CROATIA THE REPUBLIC OF INDONESIA