

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SLOVENIA AND THE GOVERNMENT OF THE KINGDOM OF SWEDEN ON THE PROMOTION AND MUTUAL PROTECTION OF INVESTMENTS

The Government of the Republic of Slovenia and the Government of the Kingdom of Sweden, hereinafter referred to as the "Contracting Parties",

Desiring to intensify economic cooperation to the mutual benefit of both countries and to maintain fair and equitable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and mutual protection of investments on the basis of this Agreement will stimulate business initiatives,

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 investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter including, in particular, though not exclusively:

- a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges and similar rights;
- b) Shares, stocks, debentures and any other form of interest in a company;
- c) Claims to money or to any performance having an economic value;
- d) Intellectual property rights, technical processes, trade names, know-how, goodwill and other similar rights; and
- e) Concessions conferred by law, by administrative act or under a contract, by a competent authority, including concessions to search for, develop, extract or exploit natural resources.

Goods, that under a leasing agreement are placed at the disposal of a lessee in the territory of one Contracting Party by a lessor being an investor of the other Contracting Party, shall be treated no less favourably than an investment.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investments, provided that such alteration is in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

2 . The term "returns" shall mean the amounts yielded by investments and in particular, though not exclusively, shall include profits, dividends, interests, royalties, capital gains or other forms of income related to the investments including technical assistance fees.

3 . The term "investor" shall mean:

- a) Natural persons having the nationality of either Contracting Party, in accordance with its laws,
- b) Legal persons constituted under the law of that Contracting Party, and
- c) Legal persons not constituted under the law of that Contracting Party but controlled, directly or indirectly, by natural persons as defined in a) or by legal persons as defined in b) above.

4 . The term "territory" shall mean the territory of each Contracting Party as well as the exclusive economic zone, the seabed

and subsoil, over which the Contracting Party exercises, in accordance with international law, sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investments

- 1 . Each Contracting Party shall promote and encourage, as far as possible, within its territory investments made by investors of the other Contracting Party and shall admit such investments into its territory in accordance with its laws and regulations.
- 2 . Each Contracting Party shall accord to investments in its territory of investors of another Contracting Party fair and equitable treatment and full and constant protection and security. In no case shall a Contracting Party accord treatment less favourable than that required by international law.
- 3 . Neither Contracting Party shall in any way impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.
- 4 . Subject to the laws and regulations relating to the entry and sojourn of aliens, individuals working for an investor of one Contracting Party, as well as members of their household, shall be permitted to enter into, remain on and leave the territory of the other Contracting Party for the purpose of carrying out activities associated with investments in the territory of the latter Contracting Party.

Article 3. National and Most Favoured Nation Treatment

- 1 . Investments made by investors of one Contracting Party in the territory of the other Contracting Party, or returns related thereto, shall be accorded treatment which is not less favourable than the latter Contracting Party accords to the investments and returns made by its own investors or by investors of any third State, whichever is the more favourable.
- 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, treatment which is not less favourable than the latter Contracting Party accords its own investors or to investors of any third State, whichever is the more favourable.
- 3 . The provisions 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 by virtue of:
 - a) Any existing or future free trade area, customs union or common market to which either of the Contracting Parties is or may become a Party, and
 - b) Any international agreement or any domestic legislation relating wholly or mainly to taxation.

Article 4. Expropriation

- 1 . Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalised or subject to any other measure having effect equivalent to expropriation or nationalization (hereinafter referred to as "expropriation") except for a public purpose, on a non-discriminatory basis, under due process of law and against prompt, adequate and effective compensation.
- 2 . Such compensation shall amount to the fair market value of the investment expropriated at the time immediately before the expropriation or impending expropriation became known in such a way as to affect the value of the investment (hereinafter referred to as the "valuation date").
- 3 . Such fair market value shall at the request of the investor be expressed in a freely convertible currency on the basis of the market rate of exchange existing for that currency on the valuation date. Compensation shall also include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment.
- 4 . The investor whose investments are expropriated, shall have the right under the law of the expropriating Contracting Party to the prompt review by a judicial or other competent authority of that Contracting Party of its case and of the valuation of its investments in accordance with the principles set out in this Article.

Article 5. Compensation for Losses

Investors of one Contracting Party whose investments have suffered losses owing to war or other armed conflict, revolution, national uprising, state of emergency or any similar event in the territory of the other Contracting Party shall be accorded by

the latter Contracting Party treatment, as regards measures it adopts in relation to such losses, including compensation, indemnification and restitution, no less favourable than that which the latter Contracting Party accords to its own investors or investors of any third State. Any payment made under this Article shall be freely transferable.

Article 6. Transfers

1 . Each Contracting Party shall guarantee investors of the other Contracting Party the free transfer of funds related to their investments and in particular, though not exclusively:

- a) Initial capital and additional contributions for the maintenance or development of the investments;
- b) The returns;
- c) Funds in repayment of loans related to an investment;
- d) Proceeds from the sale or liquidation of all or part of an investment;
- e) Any compensation or other payment referred to in Articles 4 and 5 of this Agreement;
- f) Earnings and other remuneration of nationals engaged from abroad in connection with the investment.

2 . Transfers shall be made at the market rate of exchange existing on the date of transfer with respect to spot transactions in the currency to be transferred. In the absence of a market for foreign exchange, the rate to be used will be the most recent rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is more favourable to the investor.

Article 7. Subrogation

If a Contracting Party or its designated agency makes a payment to its investor under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 8, recognize the assignment to the former Contracting Party or its designated agency of all rights and claims of the investor which that Contracting Party or its designated agency shall be entitled to exercise by virtue of subrogation to the same extent as the Party indemnified.

Article 8. Disputes between the Contracting Parties

1 . Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled by negotiations through diplomatic channels.

2 . If the dispute cannot thus be settled within six (6) months, following the date on which such negotiations were requested by either Contracting Party, it shall at 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 (2) 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 three (3) 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 President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or 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 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. The decisions of the Tribunal shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the member appointed by that Contracting Party and of its representatives at the arbitral proceedings. Both Contracting Parties shall assume an equal share of the cost of the Chairman, as well as any other costs. The Tribunal may make a different decision regarding the sharing of the costs. In all other respects, the Tribunal court shall determine its own rules of procedure.

Article 9. Disputes between an Investor and a Contracting Party

1 . Any dispute concerning an investment between and investor of one Contracting Party and the other Contracting Party shall, if possible, be settled amicably.

2 . Each Contracting Party hereby consents to submit to the International Centre for Settlement of Investment Disputes (ICSID) for settlement by conciliation or arbitration under the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States any such dispute which has not been settled within six months following the date, on which the dispute has been raised by either party. If the parties to such a dispute have different opinions as to whether conciliation or arbitration is the more appropriate method of settlement, the investor shall have the right to choose. The dispute may also, at the choice of the investor, be submitted for settlement by binding arbitration to an ad hoc arbitral tribunal to be set up under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3 . For the purpose of this Article and in accordance with Article 25 (2) (b) of the said Washington Convention, any legal person which is constituted in accordance with the legislation of one Contracting Party and which, before a dispute arises, is controlled by an investor of the other Contracting Party, shall be treated as a legal person of the other Contracting Party.

The appointing authority under the UNCITRAL Arbitration 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.

4 . Any arbitration under the Arbitration Rules of UNCITRAL shall be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

5 . The consent given by each Contracting Party in paragraph (2) and the submission of the dispute by an investor under the said paragraph shall satisfy the requirement of:

(a) Chapter II of the Washington Convention (Jurisdiction of the Centre) for written consent of the parties to a dispute;

(b) Article 1 of the UNCITRAL Arbitration Rules for an agreement in writing on referral to arbitration by the parties to a contract; and Article 1 of the UNCITRAL Arbitration Rules for an agreement in writing on referral to arbitration by the parties to a contract; and

(c) Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958, for an agreement in writing.

6 . Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out without delay the provisions of any such award and provide in its territory for the enforcement of such award.

7 . In any proceeding involving an investment dispute, a Contracting Party shall not assert, as a defense, 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 pursuant to an insurance or guarantee contract provided that the Contracting Party may require evidence that the compensating party agrees to that the investor exercises the right to claim compensation.

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 hereafter 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 for by this Agreement, such provisions shall, to the extent that they are more favourable, prevail over this Agreement.

Article 11. Application of the Agreement

1 . This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled, before its entry into force.

2 . Investors referred to in Article 1 paragraph 3 c) may not raise a claim based on this Agreement if in respect of the same matter the provisions of another investment protection agreement have been invoked.

Article 12. Consultations

Representatives of the Contracting Parties shall, whenever necessary, hold consultations on any matter affecting the implementation of this Agreement. These consultations shall be held, on the proposal of either Contracting Party, at a place and a time to be agreed upon through diplomatic channels.

Article 13. Entry Into Force, Duration and Termination

1 . The Contracting Parties shall notify each other when the constitutional requirements for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the first day following the date of receipt of the last notification.

2 . This Agreement shall remain in force initially for a period of fifteen (15) years and shall be considered as renewed on the same terms for a period of fifteen (15) years and so forth, unless twelve (12) months before its expiration either Contracting Party notifies the other in writing of its intention to terminate the Agreement.

3 . In respect of investment made prior to the date of termination of this Agreement the provisions of Articles 1 to 12 shall remain in force for a further period of fifteen (15) years from the date of termination of this Agreement.

Done in duplicate at Stockholm on 5 October 1999 in the Slovenian, Swedish 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 Slovenia

Dr. Marjan Senjur (s)

For the Government of the Kingdom of Sweden

Leif Pagrotsky (s)