

# **A G R E E M E N T ON THE PROMOTION AND PROTECTION OF INVESTMENTS BETWEEN BOSNIA AND HERZEGOVINA AND THE KINGDOM OF DENMARK**

Bosnia and Herzegovina and the Kingdom of Denmark, 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;

Intending to create and maintain favourable conditions for greater investment by investors of one Contracting Party in the territory of the other Contracting Party;

Recognising that the promotion and reciprocal protection of such investments under this Agreement will be conducive to the stimulation of business initiative and will increase economic prosperity of the Contracting Parties;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" means every kind of asset provided that the investment has been made in accordance with the laws and regulations of the Contracting Party and shall include, in particular, though not exclusively: a) Tangible and intangible, movable and immovable property, as well as any other property rights such as leases, mortgages, liens, pledges, privileges, guaranties and any other similar rights;
- b) A company or business enterprise, or shares in, stocks and any other form of participation in companies or business enterprise and bonds and debt of a company or business enterprise;
- c) Returns reinvested, claims to money and claims to any performance having an economic value;
- d) Industrial and intellectual property rights such as copyrights, patents, industrial designs, trademarks, technology, trade names, good will and know-how;
- e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract and exploit natural resources.

A change in the form in which assets are invested, does not affect their character as investments.

2. The term "investor" means: a) In respect of Bosnia and Herzegovina: (i) Natural persons deriving their status as Bosnia and Herzegovina citizens from the law in force in Bosnia and Herzegovina if they have permanent residence or main place of business in Bosnia and Herzegovina;
- (ii) Legal persons established in accordance with the laws in force in Bosnia and Herzegovina, which have their registered seat, central management or main place of business in the territory of Bosnia and Herzegovina.
- b) In respect of the Kingdom of Denmark: (i) Natural persons having the citizenship or nationality of, or who are permanently residing in the Kingdom of Denmark in accordance with its laws;
- (ii) Any entity established in accordance with, and recognised as a legal person by the law of the Kingdom of Denmark, such as companies, firms, associations, development finance institutions, foundations or similar entities irrespective of whether their liabilities are limited and whether or not their activities are directed at profit.

3. The term "returns" means an amount yielded by an investment and in particular, though not exclusively, includes

royalties or licence fees, profits, interest, dividends, capital gains and other fees.

4. The term "territory" means: a) With respect to 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.

b) With respect to the Kingdom of Denmark: the territory under its sovereignty as well as maritime zones and continental shelf over which the Kingdom of Denmark exercises sovereign rights or jurisdiction in accordance with international law.

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

1. Each Contracting Party shall, subject to its general policy in the field of foreign investment, encourage and create favourable, stable and transparent conditions for investors of the other Contracting Party to make investments in its territory, including facilitating the establishment of representative offices, and shall admit such investments in accordance with its legislation.

2. Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the expansion, management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

3. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

## **Article 3. National Treatment and Most-favoured-nation Treatment**

1. Each Contracting Party shall in its territory accord to investments and returns of investors of the other Contracting Party treatment which in any case shall not be less favourable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State, whichever is more favourable to the investors of the other Contracting Party.

2. Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, treatment less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable to the investors of the other Contracting Party.

3. The provisions of paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

a) The membership of any existing or future Regional Economic Integration Organisation or customs union of which one of the Contracting Parties is or may become a party; or

b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

## **Article 4. Nationalisation and Expropriation**

1. Investments of investors of each Contracting Party shall not be nationalised, expropriated or subjected to requisition or 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 related to the internal needs and under due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation.

2. Such compensation shall amount to the fair market value of the investments affected immediately before the expropriation or before the impending expropriation became publicly known in such a way as to affect the value of the investment (hereinafter referred to as the "valuation date"), whichever is the earlier. Such fair market value shall be calculated in a freely convertible currency on the basis of the market rate of exchange existing for that currency on the valuation date. The compensation shall include interest at a normal commercial rate for current transactions from the date of expropriation until the date of payment. The compensation shall be paid in a freely convertible currency and made transferable without delay, to the country designated by the claimants concerned.

3. The affected investors of either Contracting Party shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other competent and independent authority of that Party, concerning the legality of the expropriation, its process and the valuation of the investment in accordance with the principles set out in paragraph 1 of this Article.

4. When a Contracting Party expropriates the assets of a company or an enterprise in its territory, which is incorporated or constituted under its law, and in which investors of the other Contracting Party have an investment, including through shareholding, the provisions of this Article shall apply to ensure prompt, adequate and effective compensation for those investors for any impairment or diminishment of the fair market value of such investment resulting from the expropriation.

## **Article 5. Compensation for Losses**

1. Investors of either Contracting Party who suffer losses including damages in respect of their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot 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, whichever is more favourable to the investors of the other Contracting Party.

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 area of another Contracting Party resulting from:

- a) Requisitioning of its investment or part thereof by the latter's forces or authorities, or
- b) Destruction of its investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

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

## **Article 6. Transfers**

1. Each Contracting Party shall with respect to investments in its territory by investors of the other Contracting Party allow the free transfer into and out of its territory. Such transfer shall include in particular, but not exclusively:

- a) Initial capital and additional amounts necessary for the maintenance and development of the investment;
- b) Returns from the investment;
- c) Funds in repayment of loans related to an investment, and interest due;
- d) Payments derived from rights derived from rights enumerated in Article 1, paragraph 1, d) of this Agreement.
- e) The invested capital or the proceeds from the total or partial sale or liquidation of an investment;
- f) Any compensation or other payment referred to in Articles 4 and 5 of this Agreement;
- g) Payments arising out of the settlement of the disputes;
- h) Unspent earnings and other remuneration of personnel engaged from abroad in connection with an investment.

2. Transfers shall be effected without delay in a freely convertible currency at the market rate of exchange applicable 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 exchange rate applied to inward investments.

3. 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 7. Subrogation**

1. If a Contracting Party or its designated agency makes a payment to any of its investors under a guarantee or a contract of insurance against non-commercial risks given in respect of an investment, the other Contracting Party shall recognise, notwithstanding its rights under the 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, payments due pursuant to those rights.

## **Article 8. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Any dispute concerning an investment between an investor of one Contracting Party and the other Contracting Party shall, if possible, be settled amicably.
2. If any such dispute cannot be settled within six months following the date on which the dispute has been raised by the investor through written notification to the Contracting Party, each Contracting Party hereby consents to the submission of the dispute, at the investors' choice, for resolution by international arbitration to one of the following fora:
  - a) The International Centre for Settlement of Investment Disputes (ICSID) for settlement by arbitration under the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, or
  - b) An ad hoc tribunal under the Additional Facility Rules of ICSID, if the Centre is not available under the Washington Convention, or
  - c) An ad hoc tribunal set up under Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) The appointing authority under the said rules shall be the Secretary-General of ICSID.

If the parties to such a dispute have a different opinion as to whether conciliation or arbitration is the more appropriate method of settlement, the investor shall have the right to choose. 3. For the purpose of this Article and 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, was controlled by an investor of the other Contracting Party, shall be treated as a legal person of the other Contracting Party.

4. Any arbitration under the Additional Facility Rules of ICSID or the UNCITRAL Arbitration Rules 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 constitute the written consent and written agreement of the parties to the dispute to its submission for settlement for the purposes of Chapter II of the Washington Convention (Jurisdiction of the Centre), the Additional Facility Rules of ICSID, Article 1 of the UNCITRAL Arbitration Rules and Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

6. In any proceeding involving an investment dispute, a Contracting Party shall not assert, as a defence, 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, but the Contracting Party may require evidence that the compensation party agrees to that the investor exercises the right to claim compensation.

7. 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.

## **Article 9. Consultations and Exchange of Information**

The Contracting Parties agree to consult promptly, on the request of either, on any matter relating to the interpretation or application of this Agreement. These consultations may include the exchange of information on the impact that the laws, regulations, decisions, administrative practices or procedures or policies of the other Contracting Party may have on investments covered by this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a place and at a time agreed upon through diplomatic channels.

## **Article 10. Settlement of Disputes between Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled by consultations and negotiations through diplomatic channels.
2. If a dispute between the Contracting Parties cannot be settled in accordance with paragraph 1 of this Article within six months from the date of request for settlement, the dispute shall upon the request of either Contracting Party be submitted

to an arbitral tribunal of three members.

3. Such arbitral tribunal shall be constituted for each individual case in the following way. Within two months from the date of 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 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 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 tribunal shall determine its own procedure.

6. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties.

7. 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.

8. 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 court under the provisions of Article 8 and is still before the court. This will not impair the possibility of dispute settlement in accordance with paragraph 1 of this Article.

## **Article 11. 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, as long as they last.

## **Article 12. Application of the 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 prior to or after the entry into force of the Agreement. It shall, however, not be applicable to divergences or disputes, which have arisen prior to its entry into force.

## **Article 13. Territorial Extension**

This Agreement shall not apply to the Faroe Islands and Greenland.

The provisions of this Agreement may be extended to the Faroe Islands and Greenland as may be agreed between the Contracting Parties in an Exchange of Notes.

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

1. Each Contracting Party shall notify the other in writing of the completion of the internal legal formalities required in its territory for the entry into force of this Agreement. This Agreement shall enter into force thirty days after the date of the dispatch of the latter of the two notifications. Ratification documents shall be exchanged as soon as possible.

2. This Agreement shall remain in force for a period of ten years after the date of its entry into force and shall continue in force unless terminated in accordance with paragraph 3 of this Article.

3. Either Contracting Party may, by giving one year in advance written notice to the other Contracting Party, terminate this Agreement at the end of the initial ten year period or at any time thereafter.

4. With respect to investments made or acquired prior to the date of termination of this Agreement, the provisions of all other Articles of this Agreement shall continue to be effective for a further period of ten years from such date of termination.

5. 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.

6. 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 in duplicate at Sarajevo, this 24th day of March 2004, in two originals in the Bosnian/Croatian/Serbian, Danish and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR BOSNIA AND HERZEGOVINA FOR THE KINGDOM OF DENMARK

Dragan Doko Minister of Foreign Trade and Economic Relations Mr. Johannes Dahl-Hansen Ambassador