

Agreement between Bosnia and Herzegovina and the Swiss Confederation on the Promotion and Reciprocal Protection of Investments

The Swiss Confederation and Bosnia and Herzegovina, hereinafter referred to as "the Contracting Parties",

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

Intending to create and maintain favourable conditions for investments 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 and in particular:

- a) Movable and immovable property as well as any other property rights such as servitudes, mortgages, liens, pledges and usufructs;
- b) Shares, stocks and any other form of participation in companies;
- c) Claims to money or to any performance having an economic value;
- d) Copyrights, industrial property rights (such as patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), know-how and goodwill;
- e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract and exploit natural resources as well as all other rights given by law, by contract or by decision of the authority in accordance with the law.

Any subsequent change in the form in which assets are invested or reinvested shall not affect their character as investment.

2. The term "investor" means:

a) In respect of the Swiss Confederation:

- (i) Natural persons who, according to the law of the Swiss Confederation, are considered to be its nationals;
- (ii) Legal entities, including companies, corporations, business associations and other organisations, which are constituted or otherwise duly organised under the law of the Swiss Confederation and have their seat, together with real economic activities, in the territory of the Swiss Confederation;
- (iii) Legal entities not established under the law of the Swiss Confederation but effectively controlled by natural persons as defined in (i) above or by legal entities as defined in (ii) above.

b) 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 their 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.

3. The term "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, dividends, capital gains, royalties and other fees.

4. The term "territory" means with respect to each Contracting Party the land territory and, where applicable, the internal waters, maritime area and airspace under its sovereignty, including the exclusive economic zone and the continental shelf where the Contracting Party concerned exercises sovereign rights or jurisdiction in conformity with international law.

Article 2. Scope of Application

The present Agreement shall apply to investments in the territory of one Contracting Party made in accordance with its laws and regulations by investors of the other Contracting Party, whether prior to or after the entry into force of the Agreement. It shall however not be applicable to claims or disputes arising out of events which occurred prior to its entry into force.

Article 3. Promotion and Admission

1. Each Contracting Party shall create favourable, stable and transparent conditions for investments by investors of the other Contracting Party, and shall encourage such investments and admit them in accordance with its laws and regulations.

2. When a Contracting Party shall have admitted an investment on its territory, it shall provide, in accordance with its laws and regulations, all necessary permits in connection with such investment including permits for the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance as well as authorizations required for the activities of managerial and technical personnel of the investor's choice, regardless of nationality.

Article 4. Protection and Treatment

1. Investments and returns 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 management, maintenance, use, enjoyment, extension, or disposal of such investments.

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

3. Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment not less favourable than that which it accords to its own investors or investors of any third State, whichever is more favourable to the investor concerned.

4. If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, a customs union or a common market or by virtue of an agreement on the avoidance of double taxation, it shall not be obliged to accord such advantages to investors of the other Contracting Party.

Article 5. Expropriation and Nationalization

1. Neither of the Contracting Parties shall take measures of expropriation, nationalization or any other measures having the same nature or the same effect against investments of investors of the other Contracting Party (hereinafter referred to as "expropriation"), unless the measures are taken in the public interest, on a non-discriminatory basis and under due process of law, and provided that provisions be made for prompt, effective and adequate compensation.

2. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriatory action was taken or became public knowledge in such way as to affect the value of the investment, whichever is earlier. The amount of compensation shall include interest at a normal commercial rate from the date of dispossession until the date of payment, shall be settled in a freely convertible currency, be paid without delay and be freely transferable.

3. The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of his case and of the valuation of his investment in accordance with the principles set out in this Article.

4. 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, to the extent necessary and subject to its laws, ensure, that compensation according to this Article will be made available to such investors.

Article 6. Compensation for Losses

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, civil disturbance or other similar event, 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 investor concerned.

Article 7. Free Transfer

1. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investors the transfer without restriction or delay in a freely convertible currency of the amounts relating to such investments, in particular of:

- a) Returns;
- b) Payments relating to loans incurred, or other contractual obligations undertaken, for the investment;
- c) Amounts assigned to cover expenses relating to the management of the investment;
- d) Royalties and other payments deriving from rights enumerated in Article I, paragraph 1, letters c), d) and e) of this Agreement;
- e) Earnings and other remuneration of personnel engaged from abroad in connection with the investment;
- f) The initial capital and additional amounts to maintain or increase the investment;
- g) The proceeds of the partial or total sale or liquidation of the investment, including possible increment values.
- h) Any compensation or other payment referred to in Articles 5 and 6 of this Agreement;
- i) Payments arising out of the settlement of disputes.

2. Unless otherwise agreed with the investor, transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force of the Contracting Party in whose territory the investment was made.

3. A transfer shall be deemed to have been made "without delay" if effected within such period as is normally required for the completion of transfer formalities. Such formalities shall apply to investors without discrimination.

Article 8. Subrogation

Where one Contracting Party has granted any financial guarantee against noncommercial risks in regard to an investment by one of its investors in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party by virtue of the principle of subrogation to the rights of the investor when payment has been made under this guarantee by the first Contracting Party.

Article 9. Disputes between a Contracting Party and an Investor of the other Contracting Party

1. For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party and without prejudice to Article 10 of this Agreement (Disputes between the Contracting Parties), consultations will take place between the parties concerned. Article 10 of this Agreement (Disputes between the Contracting Parties), consultations will take place between the parties concerned.

2. If these consultations do not result in a solution within six months from the date of the written request for consultations, the investor may submit the dispute either to the courts or the administrative tribunals of the Contracting Party in whose territory the investment has been made or to international arbitration. In the latter event the investor has the choice

between either of the following:

a) The International Centre for Settlement of Investment Disputes (ICSID) provided for by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington, on March 18, 1965 (hereinafter the "Convention of Washington"); or

b) An ad hoc-arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. Each Contracting Party hereby consents to the submission of an investment dispute to international arbitration.

4. A company which has been incorporated or constituted according to the laws in force in the territory of one Contracting Party and which before a dispute arises was under the control of investors of the other Contracting Party shall, in accordance with Article 25 (2) (b) of the Convention of Washington, be treated as a company of the other Contracting Party.

5. The Contracting Party which is party to the dispute shall at no time whatsoever during the process assert as a defence its immunity or the fact that the investor has received or will receive, by virtue of an insurance contract, a compensation covering the whole or part of the incurred damage.

6. Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to international arbitration unless the other Contracting Party does not abide by and comply with the arbitral award.

7. The arbitral award shall be final and binding for the parties to the dispute and shall be executed without delay according to the law of the Contracting Party concerned.

Article 10. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall if possible be settled through diplomatic channels.

2. If both Contracting Parties cannot reach an agreement within six months after the beginning of the dispute between themselves, the latter shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a chairman who shall be a national of a third State.

3. If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

4. If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

5. If, in the cases specified under paragraphs 3 and 4 of this Article, the President of the International Court of Justice is prevented from carrying out the said function or is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or is a national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.

6. Subject to other provisions made by the Contracting Parties, the tribunal shall determine its own procedure. 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, unless the arbitral tribunal decides otherwise.

7. The decisions of the tribunal are final and binding for each Contracting Party.

Article 11. Consultations and Exchange of Information

1. 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 one of the Contracting Parties at a place and at a time to be agreed upon through diplomatic channels.

2. Upon request by either Contracting Party, information shall be exchanged on the impact that the laws, regulations, decisions, administrative practices or procedures, or policies of the other Contracting Party may have on the investments

covered by this Agreement.

Article 12. Other Commitments

1. If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter, whether general or specific, entitle investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such provisions or obligations shall to the extent that they are more favourable prevail over the present Agreement as long as they last.
2. Each Contracting Party shall observe any other obligation it may have entered into with regard to a specific investment of an investor of the other Contracting Party.

Article 13. Entry Into Force, Duration and Termination

1. The Contracting Parties shall notify each other when the conditions required by their national legislation for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force thirty days after the date of the latter notification.
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.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 the 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 the entry 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 at Sarajevo, on 5 September 2003, in two originals in the English language.

For the Swiss Confederation

For Bosnia and Herzegovina