

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CROATIA AND THE GOVERNMENT OF MALTA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

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

Desiring to promote greater economic co-operation between them, with respect to investment by investors of one Contracting Party in the territory of the other Contracting Party;

Recognising that agreement upon the treatment to be accorded to such investment will stimulate the flow of private capital and the economic development of the Contracting Parties;

Agreeing that a stable framework for investment will maximise effective utilisation of economic resources and increase prosperity;

Having resolved to conclude the Agreement on the promotion and reciprocal protection of investments;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1. The term "investment" means every kind of assets invested 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 similar rights;
- b) 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, as defined in the multilateral agreements concluded under the auspices of the World Intellectual Property Organisation, in as far as both Contracting Parties are parties to them, including, but not limited to, copyrights and neighbouring rights, industrial property rights, trademarks, patents, industrial designs 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 assets are invested or reinvested shall not affect their character as an investment. 2. The term "investor" means in respect of either Contracting Party:

- a) Any natural person who is a national of that Contracting Party, who makes or acquires an investment in the territory of the other Contracting Party;
- b) Any legal person incorporated, constituted or otherwise duly organised and registered in accordance with the laws and regulations of one Contracting Party, performing real business activity in the territory of the same Contracting Party and making an investment in the territory of the other Contracting Party;
- c) Any legal entity, or partnership, constituted in accordance with the laws and regulations of a third State, which invests in the territory of either of the Contracting Parties in which the investor referred to in a) or b) of this paragraph exercises a

dominant influence.

3. The term "returns" means income deriving from an investment and includes, in particular though not exclusively, profits, dividends, interests, capital gains, royalties, patents, licence fees, and other fees.

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" means any currency which is widely traded in international foreign exchange markets and widely used in international transactions.

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 Malta: the territory of Malta as well as those maritime areas including the seabed and subsoil adjacent to the outer limit of the territorial sea over which Malta exercises, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of natural resources of such areas.

Article 2. Promotion and Admission 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 shall admit such investments in accordance with its laws and regulations.

2. In order to encourage mutual investment flows, each Contracting Party shall endeavour 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 examine in good faith, in accordance with its laws and regulations, without delay, requests for permits required in connection with the activities of consultants or experts engaged by investors of the other Contracting Party.

4. Each Contracting Party shall, subject to its laws, regulations and procedures affecting the entry, stay and work of natural persons, examine in good faith and give due consideration, regardless of nationality, to requests of key personnel including top managerial and technical persons who are employed for the purposes of investments in its territory, to enter, remain temporarily 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, at all times, extend in its territory full protection and security to investments and returns of investors of the other Contracting Party. Neither Contracting Party shall impair, by arbitrary or 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 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 the provisions of this Agreement.

Article 4. National 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 a treatment no less favourable than that which it accords to investments and returns of its own investors, or investments and returns of investors of any third State, whichever is more favourable to the investors concerned.

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 no 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 concerned.

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 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 agreements to which either of the Contracting Party is or may become a party in the future;
- b) Any international agreement or arrangement, completely or partially related to taxation.

Article 5. Expropriation

1. A Contracting Party shall not expropriate or nationalise directly or indirectly an investment in its territory of an investor of the other 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. Such compensation shall be paid without delay.

3. Such compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation occurred. The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier.

4. Such compensation shall be fully realisable and freely transferable in accordance with Article 7 of this Agreement.

5. An investor of a Contracting Party affected by the expropriation carried out by the other Contracting Party shall have the right to prompt review of its case, including the valuation of its investment and the payment of compensation in accordance with the provisions of this Article, by a judicial authority or another competent and independent authority of the latter Contracting Party.

Article 6. Compensation for Damage or Loss

1. When investments made by investors of either Contracting Party suffer loss or damage due to war or other armed conflict, civil disturbances, revolution, riot or similar events in the territory of the other Contracting Party, they shall be accorded by the latter Contracting Party, treatment, as regards restitution, indemnification, compensation or any other settlement, no less favourable than that accorded by the latter Contracting Party to its own investors or to investors of any third State, whichever is most favourable to the investors concerned.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting Party resulting from:

- a) Requisitioning of their property or part thereof by the latter's forces or authorities;
- b) Destruction of their property or part thereof by the latter's forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded by the latter Contracting Party prompt restitution, and where applicable prompt, adequate and effective compensation for damage or loss sustained during the period of requisitioning or as a result of destruction of their property. Resulting payment shall be made without delay in a freely convertible currency. 3. An investor whose investment suffers 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 and of the valuation of its investments and payment of compensation in accordance with the principles set out in paragraph 2 of this Article.

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) Payments made under a contract including a loan agreement;
 - d) Proceeds from the sale or liquidation of all or any part of an investment;
 - e) Payments of compensation under Articles 5, 6 and 8 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. Any transfer referred to in this Article shall be effected at the market rate of exchange existing on the day 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.

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, 6 and 8 until the date of transfer of payment and payment will be effected in accordance with the provisions of paragraphs 1 and 2 of this Article.

Article 8. Subrogation

If a Contracting Party or its designated agency makes a payment to its own investor under an indemnity, guarantee or contract of insurance against non-commercial risks, given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise 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 other Obligations

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 favourable than is provided for by the present Agreement, such rule shall, to the extent that it is more favourable, 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 amicably by negotiation.
2. If a dispute under paragraph 1 of this Article cannot be settled within six (6) months from a written notification, the dispute shall, upon the request of the investor, be settled as follows:
- a) By a competent court of the host Contracting Party, or
 - b) By conciliation or arbitration by the International Centre for Settlement of Investment 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, 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 implies the renunciation of the requirement that the internal administrative or judicial remedies should be exhausted; or
 - c) By arbitration by three arbitrators in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), as amended by the last amendment accepted by both Contracting Parties at the time of the request for initiation of the arbitration procedure. 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; or
 - d) By arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC).

3. The award shall be final and binding and shall be executed according to the domestic law of the Contracting Party concerned. Each Contracting Party shall ensure the recognition and enforcement of the arbitral award in accordance with its relevant laws and 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 arbitral 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 arbitrator 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. Application of the Agreement

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 before its entry into force.

Article 13. Entry Into Force

This Agreement shall enter into force on the date of receipt of the second notification through diplomatic channels by which either Contracting Party notifies the other Contracting Party that its internal legal requirements for the entry into force of this Agreement have been fulfilled.

Article 14. Duration and Denunciation

1. This Agreement shall remain in force for a period of ten (10) years and shall be extended thereafter for the following ten years' period unless, one year before the expiration of the initial or any subsequent period, either Contracting Party notifies the other Contracting Party of its intention to denounce the Agreement. In that case, the denunciation shall become effective by the expiration of the current period of ten (10) years.

2. In respect of investments made prior to the date when the denunciation of this Agreement becomes effective, the provisions of this Agreement shall continue to be effective for a period of ten (10) years from the date of denunciation of this Agreement.

IN WITNESS WHEREOF, the undersigned representatives, duly authorised thereto, have signed the present Agreement.

Done at Zagreb on 11th July 2001 in two originals in Croatian and English languages, both texts being equally authentic. The text in the English language shall prevail in case of difference of interpretation.

FOR THE GOVERNMENT OF THE REPUBLIC OF CROATIA FOR THE GOVERNMENT OF MALTA