

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

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

Desiring to establish favourable conditions for better economic co-operation between the states, and in particular with respect to investment by investors of one Contracting Party in the territory of the other Contracting Party;

Aiming at the promotion and reciprocal protection of such investment, based on international Agreements which will contribute to promoting business relations and economic development of both States;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" means every kind of assets invested in accordance with the legislation of the Contracting Party in which territory the investment has been made 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;
- b) stock, shares, debentures and other form of participation in companies;
- c) claims to money or any other claims under contract, having economic value and related to investment;
- d) intellectual property rights, including copyrights and neighbouring rights, patents, rights in plants varieties, industrial design, topography of semiconductor integrated circles, business secrets, including know-how and confidential business information, trademarks and services and trade names;
- e) concessions granted pursuant to the law or contract to engage in any economic and commercial activity, including concessions to search for, cultivate, extract or exploit natural resources.

2. The term "investor" means any natural or legal person of either Contracting Party investing in the territory of the other Contracting Party:

- a) the term "natural person" means with respect to both Contracting Parties any natural person having nationality of one of the Contracting Parties;
- b) the term "legal person" means with respect to both Contracting Parties any legal person constituted in accordance with the laws and regulations of either Contracting Party, having permanent seat in the territory of this Contracting Party.

3. The term "income" means income deriving from an investment and in particular profit, interests, gains from cash investments, dividends, licence fees, returns for assistance and technical services and other fees.

4. The term "territory" means the territory of the Republic of Slovenia and 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 Contracting Parties exercise, in accordance with international law, their sovereign rights or jurisdiction, without prejudice to the future defining of the maritime border between the Contracting Parties.

5. Any modification of investment in accordance with the laws and regulations of the Contracting Party in which territory the investment is made shall not affect the nature of the investment.

## **Article 2. Promotion and Protection 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. Investments of investors of either Contracting Party in the territory of the other Contracting Party shall be accorded fair and equitable treatment and full protection and security during the period of investment. Neither Contracting Party shall in its territory implement unjustified or discriminatory measures which would in any way negatively effect the management, maintenance, enjoyment, use or disposal of investments made by the investor of the other Contracting Party. Each Contracting Party shall respect any commitment undertaken with respect to the investments made by the investors of the other Contracting Party.

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

1. Neither Contracting Party shall accord in its territory to investments and returns of investors of the other Contracting Party treatment less favourable than that which it accords to investments and returns of its own investors, or investments and returns of investors of any other third State.
2. Neither 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, treatment which is less favourable than that which it accords to its own investors or to investors of any third State.
3. The provisions of this paragraph with respect to treatment not less favourable than that which is accorded to investors of either Contracting Party or to those of a third State, 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 related agreement or similar international agreement to which either of the Contracting Party is or may become a signatory in the future;
  - b) agreements concluded for the purpose of avoiding double taxation.

## **Article 4. Treatment Related to Compensation for Damage or Loss**

When the investments made by investors of either Contracting Party suffer loss or damage, owing to civil disturbances, war or other armed conflict, emergency or other similar events in the territory of the other Contracting Party, the investor of either Contracting Party shall be accorded treatment, as regards restitution or compensation, not less favourable than the latter Contracting Party accords to its own investors or investors of any third State.

## **Article 5. Expropriation**

1. The investments of investors shall not be subject to any measures which could permanently or temporary impose restrictions to the ownership right, holding, enjoyment or use, except in cases stipulated by law or separate acts enacted by the competent administrative bodies.
2. The investments of investors of either Contracting Party cannot be affected by expropriation or any other measure having the effect equivalent to expropriation (hereinafter referred to as "expropriation"), except in case of measures of public interest, required by internal circumstances of the Contracting Party, implemented on a non-discriminatory basis and accompanied by payment of prompt, adequate and effective compensation. Such compensation shall be equivalent to the real value of the expropriated investment immediately before the expropriation has become publicly known, shall include interest at the six-month LIBOR interest rate, calculated from the expropriation date until the date of actual payment. The compensation shall be prompt and freely transferable.
3. Provisions of paragraph 1 and 2 of this Article shall apply to the investment returns as well as in cases of partial or total liquidation.

## **Article 6. Repatriation of Investments and Returns**

1. Each Contracting Party shall with respect to investments of the investors of the other Contracting Party, ensure upon settlement of tax obligations, unrestricted transfer of investments and returns, as well as earnings of nationals of the first

Contracting Party who were granted work license related to investment in the territory of the other Contracting party. The transfers shall be effected without delay in freely convertible currency or the currency in which investment was made. Unless otherwise agreed by the investor, the transfers shall be made at the official rate of exchange valid on the date of transfer in accordance with the applicable foreign exchange rate regulations.

2. In accordance with the provisions of Article 3 of this Agreement, the Contracting Parties shall accord the same treatment to the transfers pursuant to paragraph 1 of this Article as they accord to transfers of investments or returns by investors of third States.

## **Article 7. Subrogation**

1. If a Contracting Party or its designated agency makes a payment under an indemnity, guarantee or insurance contract given in respect to an investment, the latter Contracting Party shall recognise the assignment of any right or claim of such investor that suffered damage 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 the investor.

2. The former Contracting Party or its designated agency shall be accorded equal treatment with respect to the rights or claims exercised pursuant to transfer.

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

1. Any dispute between a Contracting Party and an investor of the other Contracting Party shall be settled, as far as possible, in good faith and by mutual consent.

2. If a dispute cannot be settled within six-months of a written notification to the other Contracting Party, the injured investor can choose to submit the dispute:

a) to a competent court of the Contracting Party;

b) to an ad hoc arbitral tribunal in accordance with the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law (UNCITRAL);

c) to an arbitral tribunal in accordance with the Rules of Arbitration Institute of the Stockholm Chamber of Commerce;

d) to an arbitral tribunal of the International Chamber of Commerce in Paris;

e) to the International Centre for Settlement of Investment Disputes (ICSID), according the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington on 18 March 1965, as well as the Additional Facility Rules for the administration of proceedings of mediation, arbitration and fact finding.

3. The Contracting Parties shall refrain from negotiations through diplomatic channels on any issue subject to arbitration or court proceedings until such proceedings have ended.

## **Article 9. 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 through diplomatic channels.

2. If a dispute cannot be settled within six months from the date on which either Contracting Party has sent written notification to the other Contracting Party, the dispute shall upon the request of either Contracting Party be submitted to an ad hoc arbitral tribunal.

3. The arbitral tribunal shall be constituted as follows: within two months from receipt of request for arbitration procedure each Contracting Party shall appoint one arbitrator. These two arbitrators shall appoint a national of a third State as their chairman. The chairman shall be appointed three months after the appointment of the arbitral tribunal members.

4. If the periods specified in paragraph 3 of this Article are not observed, either Contracting Party may within three-months' period 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 shall make the appointments. If the Vice president is a national of either of the Contracting Parties or if is otherwise prevented from discharging the said function, the member of International Court of Justice next in seniority, who is not a national of either Contracting Parties, shall be invited to make the necessary

appointments.

5. The arbitral tribunal shall reach its decision by majority of votes, the decision shall be binding. Each Contracting Party shall bear the costs of its arbitrator and its legal representation in the arbitration proceeding. The costs of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties.

The arbitral tribunal shall establish its own rules of procedure.

## **Article 10. More Favourable Law**

If the legal regulations of either Contracting Party, or the current commitments pursuant to international law or any future commitments between the Contracting Parties comprise, apart from this Agreement, general or specific rules, which extend to the investors of either Contracting Party, the benefit of any treatment more favourable than the treatment provided for by virtue of this Agreement, such rules shall to the extent that they are more favourable prevail over this Agreement.

## **Article 11. Application of the Agreement**

This Agreement shall apply to the existing investments as well as to those investments made or acquired after entry into force of this Agreement.

## **Article 12. Entry Into Force and Duration of the Agreement**

1. This Agreement shall enter into force on the date of receipt of the latter notification through diplomatic channels by which the Contracting Parties notify each other that their 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 years from its entering into force and shall be extended thereafter for the following ten year period 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.

The denunciation shall become effective and the Agreement denounced upon expiry of one year from the date on which the other Contracting Party has received the denunciation notice through diplomatic channels.

3. In respect of investments made before the denunciation becomes effective, the provisions of this Agreement shall remain in force for a period of ten years from the date of denunciation of this Agreement.

In Witness Whereof the plenipotentiaries of their Governments have signed this Agreement.

Done at Zagreb on 12 December 1997 in two originals in the Slovenian and Croatian languages, both texts being equally authentic.

For the Government of the Republic of Slovenia:

Janez Drnovsek

For the Government of the Republic of Croatia:

Zlatko Matesa