

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF ALBANIA AND THE GOVERNMENT OF THE REPUBLIC OF CROATIA FOR THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of Albania and the Government of the Republic of Croatia, hereinafter referred to as the Contracting Parties;

DESIRING to intensify their economic cooperation to the mutual benefit of both countries on a long term basis;

HAVING as their objective to create favourable conditions for investments by investors of either Party in the territory of the other Party;

RECOGNIZING that the encouragement and protection of investments on the basis of the present Agreement, will stimulate the initiative in this field;

HAVE AGREED AS FOLLOW:

Article 1. Definitions

For the purposes of this Agreement:

1. "Investment" means every kind of asset and in particular, though not exclusively, includes:

- a) Moveble and immovable property and any other property rights;
- b) Shares in stock and other securities and any other form of interests in a company;
- c) Loans, claims to money or to any performance under contract having an economical value and accompanied by an investment;
- d) Intellectual and industrial property rights, including rights with respect to copyrights, trademarks, tradenames, patents, technological processes, know-how and goodwill;
- e) Rights confirmed by law or under contract with a Contracting Party, including the right to research for cultivate, extract or exploit natural resources.

2. "Returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and other fees.

3. "Investor" shall comprise with regard to either Contracting Party:

- a) Natural persons having the nationality of that Contracting Party in accordance with its law;
- b) Legal persons constituted in accordance with the law of that Contracting Party and having their seat within its territory

4. "Territory" means in respect of either Contracting Party, the territory under its sovereignty as well as the territorial sea, the continental shelf and submarine areas over which that Contracting Party exercises, in conformity with international law, sovereign rights of jurisdiction.

Article 2. Promotion and Protection of Investment

1. Each Contracting Party shall in its territory promote, as far as possible, investments by investors of the other Contracting Party and admit such investments in accordance with its legislation.

2. A possible change in form in which the investments have been made does not affect their substance as investments, provided that such a change does not contradict the laws and regulations of the relevant Contracting Party.
3. Returns from the investments and, in cases of approved reinvestments the income ensuing therefrom enjoy the same protection as the major investments.

Article 3. Most Favoured - Nation and National Treatment Provisions

1. Neither Contracting Party shall subject investments of the other Contracting Party to treatment less favourable than that which it accords to investments of its own investors or to investments of investors of any third State.
2. Neither Contracting Party shall subject investors of the other Contracting Party, as regards their activity in connection with investments in its territory, to treatment less favourable than that which it accords to its own investors or to investors of any third State.
3. Such treatment shall not relate to privileges which either Contracting Party accords to investors of third State on account of its membership of, or association with, a customs or economic union, a common market, a free trade area, or similar institutions.
4. The treatment granted under this Article shall not extend to advantages which either Contracting Party accords to investors of third State by virtue of a double taxation agreement or other agreements regarding matters of taxation.

Article 4. Expropriation

1. Investments by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.
 2. Investments by investors of either Contracting Party shall not be expropriated, nationalized or subjected to any other measure the effects of which would be tantamount to expropriation or nationalization in the territory of the other Contracting Party except for the public benefit and against prompt, adequate and effective compensation, and always under due process of law and without discrimination. Such compensation shall be equivalent to the market value of the expropriated investment immediately before the date on which the actual or threatened expropriation, nationalization or comparable measure has been taken or become publicly known, whichever is earlier.
- The compensation shall be paid without delay, and shall carry the current bank interest until the time of payment. It shall be effectively realizable and freely transferable. Provision shall have been made in an appropriate manner at or prior to the time of expropriation, nationalization or comparable measure for the determination and payment of such compensation.
3. Investors of either Contracting Party shall enjoy most-favoured nations treatment in the territory of the other Contracting Party in respect of the matters provided for in this Article.

Article 5. Compensation for Losses

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party, 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. Resulting payments shall be freely transferable.

Article 6. Repatriation of Investments and Returns

1. Each Contracting Party guarantees, in respect of investments of investors of the other Contracting Party, the free and prompt transfer of the investments and its returns.

The transfers shall be effected, without delay in the freely convertible currency in which the investment was made, or in another freely convertible currency to be agreed upon between the investor and the Contracting Party concerned and at the rate of exchange applicable on the date of transfer.

2. Such transfers include in particular, though not exclusively:

a) Capital and additional amounts to maintain or increase the investment;

- b) Profits, interest, dividends and other current income;
- c) Funds in repayment of loans;
- d) Royalties and other fees;
- e) Proceeds of sale or liquidation of the whole or any part of the investment;
- f) Personal earnings of foreign citizen employed by the foreign investor, as per legislation of each Contracting Party

Article 7. Subrogation

If the investments of an investor of one of the Contracting Parties are insured against non-commercial risks under a legal system of guarantee, any subrogation of the insurer or re-insurer into the rights of the said investor pursuant to the terms of such insurance shall be recognized by the other Contracting Party.

Article 8. Application

This Agreement shall also apply to investments made prior to its entry into force, by investors of either Contracting Party in the territory of the other Contracting Party consistent with the latter's legislation.

Article 9. Disputes between the Contracting Party

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through diplomatic channels.
2. If the dispute cannot thus be settled within six months from the beginning of the negotiations, it shall, upon the request of either Contracting Party, be submitted to an arbitration tribunal.
3. The arbitration tribunal shall be constituted as follow:

Each Contracting Party shall appoint one arbiter and these two arbiters shall agree upon a national of a third State as Chairman. The arbiters shall be appointed within three months, the Chairman within five months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitration tribunal.

4. If one of the Parties fails to appoint its arbiter and has not proceeded to do so within the specified period, the other Party may invite the President of the International Court of Justice to make the necessary appointments. If the two arbiters are unable to reach an agreement, in the specified period, on the choice of the third arbiter, either Party may invite the President of the International Court of Justice to make the necessary appointments.

5. If, in the cases provided for in the fourth paragraph of the present Article, the President of the International Court of Justice is prevented from exercising the said function, or is a national of either Contracting Party, the Vice President shall be invited to make the necessary appointments. If the Vice President is prevented from fulfilling of the said function or is a national of either Party, the most senior member of the Court available, who is not a citizen of either Party, shall be invited to make the necessary appointments.

6. The arbitration tribunal shall decide on the basis of respecting International Law, including particularly the present Agreement and other relevant agreements existing between the two Contracting Parties, as well as the generally acknowledged rules and principles of International Law.

7. Unless the Parties decide otherwise, the tribunal shall determine its own procedure.

8. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Parties.

9. Each Contracting Party shall bear the costs of arbiter appointed by itself and of its representatives. The cost of the Chairman as well as the other costs will be born in equal parts by the Contracting Parties.

Article 10. Settlement of Disputes between an Investor and Host State

1. Any dispute between either Contracting Party and an investor of the other Contracting Party concerning investments or the expropriation or nationalization of an investment shall, as far as possible, be settled by the disputing parties in a amicable way.

2. If such dispute cannot be settled within six months from the date either party requested amicable settlement, the investor or the Contracting Party concerned may submit the dispute either to the competent court of the Contracting Party, or to an international arbitration tribunal. Each Contracting Party here with declares its acceptance of such arbitration procedure. In the latter case, the provisions of Article 9, par 3–9 shall be applied. Nevertheless the President of the Court of the International Arbitration of the International Chamber of Commerce in Paris shall be invited to make the necessary appointments where as the arbitration tribunal shall determine its procedure by applying the UNCITRAL Arbitration Rules, as then in force. The award shall be binding and enforcer in accordance with domestic law.

3. During arbitration or the enforcement of an award, the Contracting Party involved in the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of the damage.

4. In case both Contracting Parties have become members of the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and national of the Other States, disputes between either Contracting Party and the investor of the other Contracting Party under the first paragraph of this Article, shall be submitted for settlement by conciliation or arbitration to the International Center for the Settlement of Investment Disputes. It can be submitted and to Regional Centers for International Commercial Arbitration.

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 here after between the Contracting Parties in addition to the present Agreement contain a regulation, whether general or specific entitling investments by investors of the other Contracting Party to a treatment more favourable that is provided for by the present Agreement, such regulation shall, to the extend that it is more favourable, prevail over the present Agreement.

Article 12. Consultations

Representatives of the Contracting Parties shall, whenever necessary, hold consultation 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 agreed upon through diplomatic channels.

Article 13. Entry Into Force, Duration, Termination

1. This Agreement shall enter into force thirty days after the date on which the Contracting Parties inform each other through diplomatic channels for its ratification on approval, according to their respective legislation. It shall remain in force for a period of 10 years.

2. Unless notice of termination has been given by either Contracting Party at least six months before the date of expiry of its validity, this Agreement shall be extended tacitly for periods of 10 years, each Contracting Party reserving the right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.

3. In respect of investments made prior to the date of the termination of this Agreement the foregoing Articles shall continue to be efective for a further period of 10 years from that date.

Done in duplicate in Zagreb this day of 5th March 1993 in three originals texts in Albanian, Croatian and English languages all texts being equally authentic. In case of the different interpretation, the English text shall prevail.