

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CROATIA AND THE GOVERNMENT OF THE STATE OF ISRAEL FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Croatia and the Government of the State of Israel (hereinafter: the "Contracting Parties"),

DESIRING to intensify economic cooperation to the mutual benefit of both countries;

INTENDING to create favorable conditions for greater investments by investors of either Contracting Party in the territory of the other Contracting Party; and

RECOGNIZING that the reciprocal promotion and protection of investments on the basis of the present Agreement will be conducive to the stimulation of individual business initiative and will increase prosperity in both States,

HAVE AGREED as follows:

Article 1. Definitions

For the purposes of the present Agreement:

1. The term "investments" shall comprise any kind of assets, implemented in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made including, but not limited to,

- (a) Movable and immovable property, as well as any other rights in rem, in respect of every kind of asset;
- (b) Rights derived from stocks, shares, bonds, debentures and other kinds of interests in companies;
- (c) Claims to money, goodwill and other assets and to any performance having an economic value;
- (d) Rights in the field of intellectual property, technical processes, trade secrets, confidential business information and know-how;
- (e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

2. A change in the form in which assets are invested or reinvested, in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made, does not affect their character as investments within the meaning of this Agreement.

3. The term "investor" shall comprise:

- (a) Natural persons who are nationals or permanent residents of the Contracting Party concerned who are not also nationals of the other Contracting Party; or
- (b) Companies including corporations, firms or associations incorporated or constituted in accordance with the law of the Contracting Party concerned.

4. The term "returns" shall comprise the amount yielded by an investment including, but not limited to: dividends, profits, sums received from the total or partial liquidation of an investment, interest, capital gains, royalties or fees.

5. The term "territory" means:

- (a) 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.

(b) With respect to the State of Israel: the territory of the State of Israel including the territorial sea, as well as the continental shelf and the exclusive economic zone which the State of Israel exercises sovereign rights or jurisdiction in conformity with international law.

6. The term "freely usable currency" shall mean a currency that the International Monetary Fund determines, from time to time, as a freely usable currency in accordance with the Articles of Agreement of the International Monetary Fund and Amendments thereto.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall, in its territory, encourage and create favorable conditions for investments by investors of the other Contracting Party and, subject to its right to exercise the powers conferred by its laws, shall admit such investments.

2. Investments made by investors of each Contracting Party shall 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 or disposal of investments in its territory of investors of the other Contracting Party.

Article 3. Most Favored Nation and National Treatment

1. Neither Contracting Party shall, in its territory, subject investments or returns of investors of the other Contracting Party to treatment less favorable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State.

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, to treatment less favorable than that which it accords to its own investors or to investors of any third State.

Article 4. 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, riot or other such similar activity 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 favorable 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.

2. Without prejudice to paragraph (1) of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party, resulting from:

(a) Requisitioning of their property by its forces or authorities, or

(b) Destruction of their property by its forces or authorities, which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded restitution or adequate compensation. Resulting payments shall be freely transferable.

Article 5. Expropriation

Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter: "expropriation") in the territory of the other Contracting Party, except for a public purpose related to the internal needs of that Contracting Party on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at the applicable rate provided by law of that Contracting Party until the date of payment, shall be made without delay, be effectively realizable and be freely transferable. The investors 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 or its case and of the valuation of his or its investment, in accordance with the principles set out in this paragraph.

Article 6. Repatriation of Investments and Returns

Each Contracting Party shall, in respect of investments, guarantee to investors of the other Contracting Party the rights on unrestricted transfer of their investments and returns in accordance with the following terms:

1. Transfers shall be effected without delay in the freely usable currency in which the capital was originally invested or in any other freely usable currency agreed by the investor and the Contracting Party concerned; provided that the investor has complied with all his fiscal obligations and that the repatriation is in accordance with the exchange regulations established by the Contracting Party in whose territory the investment was made.
2. In the event that the exchange regulations of one Contracting Party are modified, that Contracting Party guarantees that such modifications shall not adversely affect the rights to repatriate investments and returns, as were in force at the time the investment was made.
3. Unless otherwise agreed by the investor, transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

Article 7. Exceptions

The provisions of this Agreement related to the grant of treatment not less favorable than that accorded to the investors of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from:

- (a) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation;
- (b) Any existing or future customs union, free trade area agreement or similar international agreement to which either Contracting Party is or may become a Party.

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

1. Any investment dispute between a Contracting Party and an investor of the other Contracting Party shall be settled by negotiations.
 2. If a dispute under paragraph 1 of this Article cannot be settled within six (6) months of a written notification, the dispute shall be on the request of the investor settled as follows:
 - (a) By a competent court of the Contracting Party in whose territory the investment is made; or
 - (b) By conciliation or arbitration by the International Center for the 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 at Washington, D.C. on March 18, 1965; or
 - (c) By an ad hoc arbitration tribunal, which is to be established under the arbitration rules agreed by the parties to the dispute.
- Both parties to the dispute give their irrevocable consent in respect of the fact that all disputes relating to investments are submitted to the ICSID or an alternative arbitration procedure. 3. An investor who has submitted the dispute to national jurisdiction may nevertheless have recourse to one of the arbitral tribunals mentioned in paragraph 2 of this Article before judgement has been delivered on the subject matters by a national court, or, if such judgement has been delivered, so long as the judgement is subject to appeal, if the investor declares not to pursue the case any longer through national proceedings.

4. The award shall be final and binding and it shall be executed according to the national law.

Article 9. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement, should, if possible, be settled through the diplomatic channel, which may include, if both Contracting Parties so desire, referral to a Bilateral Commission composed of representatives of both Contracting Parties.
2. If a dispute according to paragraph 1 of this Article cannot be settled within six (6) months, from notification of this dispute it shall, upon the request of either Contracting Party be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way: within two (2) months of the 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 (2) months from the date of appointment of the other two members.

4. If, within the period specified in paragraph (3) of this Article, the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the Secretary General of the Permanent Court of Arbitration at the Hague (hereinafter: the "PCA") to make any necessary appointments. If the Secretary General of the PCA is a national of either Contracting Party or is otherwise prevented from discharging the said function, then the Deputy Secretary General of the PCA who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. 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 party by the Contracting Parties. The tribunal shall determine its own rule procedures.

Article 10. Subrogation

If one Contracting Party or its designated Agency (hereinafter: the "First Contracting Party") makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party (hereinafter: the "Second Contracting Party"), the Second Contracting Party shall recognize:

(a) The assignment of the First Contracting Party by law or by legal transaction of all the rights and claims of the party indemnified; and

(b) That the First Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified and shall assume the obligations related to the investment.

2. The First Contracting Party shall be entitled in all circumstances to:

(a) The same treatment in respect of the rights, claims and obligations acquired by it, by virtue of the assignment; and

(b) Any payments received in pursuance of those rights and claims, as the party indemnified was entitled to receive by virtue of this Agreement, in respect of the investment concerned and its related returns.

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 one Contracting Party to a treatment more favorable than is provided for the present Agreement, such rules shall to the extent that they more favorable prevail over the present Agreement.

Article 12. Application of the Agreement

The provisions of this Agreement shall apply to investments made on or before the entry into force of this Agreement, but shall not apply to any investment in dispute that may have arisen before its entry into force.

Article 13. Entry Into Force

Each Contracting Party shall notify the other Contracting Party in writing through the diplomatic channel of the completion of its internal legal procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter notification.

Article 14. Duration and Termination

This Agreement shall remain in force for a period of ten (10) years. Thereafter it shall continue in force until the expiration of twelve (12) months from the date on which either Contracting Party shall have given written notice of termination to the other. In respect of investments made while this Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of ten (10) years after the date of termination and without prejudice to the application

thereafter of the rules of general international law.

IN WITNESS whereof the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done in.....on the.....day of... ..the month of.....which corresponds to the.....day of.....the month of....., in two originals, in the Croatian, Hebrew and English languages, all texts being equally authentic. In case of divergency of interpretation, the English text shall prevail.

Upon the signing of the Agreement between the Government of the Republic of Croatia and the Government of the State of Israel for the Reciprocal Promotion and Protection of Investments; and

Taking into consideration the provisions of Article 6 of the Agreement for the Reciprocal Promotion and Protection of Investments concluded by the Government of the State of Israel with the Government of Poland, Hungary and Romania in 1991;

The Parties have agreed on the following provisions, which shall constitute an integral part of the Agreement;

The provisions of Article 3 of the Agreement for the Reciprocal Promotion and Protection of Investments shall not be construed as obliging the State of Israel to extend to investors of the Republic of Croatia the benefits of any treatment or preference resulting from the definitions of "investment" or "reinvestment" as stipulated in the Agreements for the Promotion and Reciprocal Protection of Investments concluded by the Government of the State of Israel with the Government of Poland, Hungary and Romania in 1991, and the provisions of Article 6 therein.

The Government of the State of Israel shall notify the Government of the Republic of Croatia without delay in the event the Agreements are appropriately modified so as to render this Annex unnecessary. Upon such notification this Annex shall become null and void.

Done in Jerusalem on the.....day of..... the month of....., which corresponds to the.....day of.....the month of..... in two originals, in the Croatian, Hebrew and English languages, all texts being equally authentic. In case of divergency of interpretation, the English text shall prevail.