

AGREEMENT BETWEEN THE REPUBLIC OF CROATIA AND THE KINGDOM OF SPAIN ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Republic of Croatia and the Kingdom of Spain, hereinafter referred to as "The Contracting Parties",

Desiring to intensify their economic cooperation for the mutual benefit of both countries,

Intending to create favourable conditions for investments made by investors of each Contracting Party in the territory of the other Contracting Party,

And

Recognizing that the promotion and protection of investments under this Agreement will stimulate initiatives in this field,

Have agreed as follows:

Article I. Definitions

For the purposes of the present Agreement,

1 . The term "investor" means with regard to either Contracting Party:

- a) Any individual who is a national of a Contracting Party according to its law;
- b) Any legal entity, including companies, associations, partnerships, corporations, branches and any other organization which is incorporated or, in any event, duly constituted or organized under the law of that Contracting Party.

2 . The term "investment" means every kind of assets invested by investors of one Contracting Party in the territory of the other Contracting Party and shall include in particular, although not exclusively, the following:

- a) Shares, stocks, debentures and other forms of participation in companies;
- b) Claims to money or to any performance having economic value, including every loan granted for the purpose of creating economic value;
- c) Movable and immovable property and any other property rights such as mortgages, liens, pledges and similar rights;
- d) Any industrial and intellectual property rights, including patents, licences, trademarks and tradenames, as well as technical processes, know-how and goodwill;
- e) Rights to engage in economic and commercial activities conferred by law or 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.

3 . The term "returns" refers to income deriving from an investment and includes, in particular although not exclusively, profits, dividends, interests, capital gains, royalties and fees.

4 . The term "territory" designates, the land territory and territorial waters of each of the Contracting Parties. It also designates the exclusive economic zone and the continental shelf that extends outside the limits of the territorial waters of each of the Contracting Parties, over which they have or may have jurisdiction and sovereign rights pursuant to international law for the purposes of exploitation, exploration and conservation of natural resources.

Article II. Promotion and Admission

- 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 investments 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 grant the necessary permits relating to these investments and shall allow, within the framework of its law, the execution of work permits and contracts related to manufacturing-licences and technical, commercial, financial and administrative assistance.
- 4 . Each Contracting Party shall also grant, whenever necessary, the permits required in connection with the activities of consultants or experts engaged by investors of the other Contracting Party.
- 5 . This Agreement shall apply to investments in the territory of one Contracting Party made in accordance with its legislation, prior to or after the entry into force of the Agreement, by investors of the other Contracting Party, but shall not apply to any investment dispute that may have arisen before its entry into force.

Article III. Protection

- 1 . Each Contracting Party shall extend in its territory full protection and security to investments and returns of investors of the other Contracting Party. Neither Contracting Party shall hamper, by arbitrary or discriminatory measures, the management, development, 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 at all times be accorded fair and equitable treatment in accordance with international law.

Article IV. National Treatment and Most Favoured Nation Treatment

- 1 . Each Contracting Party shall in its territory accord to investments or returns of investors of the other Contracting Party treatment no less favourable than that which it accords to the 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.
- 2 . This treatment shall not extend to the privileges which either Contracting Party may grant to investors of a third State by virtue of its membership of, or association with any existing or future customs union, free trade area, common market or similar international agreement to which either of the Contracting Parties is or may become a party.
- 3 . Each Contracting Party shall grant, under its own law, no less favourable treatment to the investments of investors of the other Contracting Party than that granted to its own investors.
- 4 . The treatment granted under 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 resulting from any international agreement relating wholly or mainly to taxation, including any agreement for the avoidance of double taxation, or any domestic legislation relating wholly or mainly to taxation.

Article V. Nationalization and Expropriation

- 1 . Investments and returns of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated or subjected to measures having an equivalent effect to nationalization or expropriation (hereinafter referred to as "expropriation") except for public interest, pursuant to the law, in a non discriminatory manner and against the payment to the investor or his legal beneficiary of prompt, adequate and effective compensation.
- 2 . Such compensation shall amount to the market value of the expropriated investment immediately before the expropriation or the impending expropriation became public knowledge (hereinafter referred to as the "valuation date"). Such market value shall be calculated in a freely convertible currency at the market rate of exchange prevailing for that currency on the valuation date. Compensation shall include interest at a commercial rate established on a market basis for the currency of valuation from date of expropriation until the date of payment. It shall be paid without delay, be effectively realizable 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 competent authority of that Contracting Party, of its case to determine whether such

expropriation and any compensation conform to the principles set out in this Article.

4 . When 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 ensure that the provisions of this Article are applied so as to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares...

Article VI. Compensation for Losses

Investors of one Contracting Party whose investments or returns in the territory of the other Contracting Party suffer losses owing to war, other armed conflicts, revolution, a state of national emergency, revolt, riot or other similar circumstances, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other settlement, treatment 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. Any payment made under this Article shall be prompt, effective and freely transferable.

Article VII. Transfer

1 . Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments relating to their investments, including particularly but not exclusively, the following:

- a) The initial capital and additional amounts needed for the maintenance or increase of an investment;
- b) Investment returns, as defined in Article I;Article I;
- c) Funds in repayment of loans related to an investment;
- d) Compensations provided for under Articles V and VI;Articles V and VI;
- e) Proceeds of the total or partial sale or liquidation of an investment;
- f) Earnings and other remuneration of personnel engaged from abroad in connection with an investment;
- g) Payments arising out of the settlement of a dispute.

2 . The host Contracting Party of the investment shall allow the investor of the other Contracting Party, or the company in which he has invested, to have access to the foreign-exchange market in a non-discriminatory manner so that the investor may purchase the necessary foreign currency to make the transfers pursuant to this Article.

3 . Transfers under the present Agreement shall be effected without delay in a freely convertible currency at the market rate of exchange prevailing on the date of transfer.

4 . The Contracting Parties undertake to facilitate the procedures needed to make these transfers without delay. In particular, no more than one months must elapse from the date on which the investor properly submits the necessary application in order to make the transfer until the date the transfer actually takes place.

5 . The Contracting Parties shall grant to transfers referred to in the present Article a treatment no less favourable than that accorded to the transfer of payments originating from investments made by investors of any third State.

Article VIII. More Favourable Terms

If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such regulation shall to the extent that it is more favourable prevail over this Agreement.

Article IX. Subrogation

If one Contracting Party or its designated Agency makes a payment under an indemnity, guarantee or contract of insurance against non-commercial risks given in respect of an investment made by any of its investors in the territory of the other Contracting Party, the latter Contracting Party shall recognize 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. This subrogation will make it possible the former Contracting Party or its designated Agency to be the direct beneficiary of any payment for indemnification or other compensation of which the investor could be entitled to.

Article X. Settlement of Disputes between the Contracting Parties

1 . Any dispute between the Contracting Parties relative to the interpretation or application of this Agreement shall as far as possible be settled through diplomatic channels.

2 . If it were not possible to settle the dispute in this way within six months from the start of the negotiations, it shall be submitted, at the request of either of the two Contracting Parties, to an arbitral tribunal.

3 . The tribunal shall be set up in the following way: each Contracting Party shall appoint an arbitrator and these two arbitrators shall nominate a chairman who shall be a national of a third State, which maintains diplomatic relations with both Contracting Parties. The arbitrators shall be appointed within three months and the president within five months from the date on which either of the two Contracting Parties informed the other Contracting Party of its intention to submit the dispute to a court of arbitration.

4 . If within the periods 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 President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make necessary appointments. 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 President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make necessary appointments.

5 . The tribunal shall issue its decision on the basis of the rules contained in this Agreement or in other agreements in force between the Contracting Parties, and as well as of the universally accepted principles of international law.

6 . Unless the Contracting Parties decide otherwise, the court shall lay down its own procedure.

7 . The tribunal shall reach its decision by a majority of votes and that decision shall be final and binding on both Contracting Parties.

8 . Each Contracting Party shall bear the expenses of the arbitrator appointed by it and those connected with representing it in the arbitration proceedings. The other expenses, including those of the president, shall be borne in equal parts by the two Contracting Parties.

Article XI. Disputes between One Party and Investors of the other Contracting Party

1 . Disputes that may arise between one of the Contracting Parties and an investor of the other Contracting Party with regard to an investment in the sense of the present Agreement, shall be notified in writing, including a detailed information, by the investor to the host Contracting Party of the investment. As far as possible, the parties concerned shall endeavour to settle amicably these differences.

2 . If these disputes cannot be settled amicably within six months from the date of the written notification mentioned in paragraph 1, the dispute shall be submitted, at the choice of the investor, to;

— the competent court of the Contracting Party in whose territory the investment was made;

— an ad hoc court of arbitration established under the Arbitration Rules of the United Nations Commission on International Trade Law;

— the International Centre for Settlement of Investment Disputes (ICSID) set up by the "Convention on Settlement of Investment Disputes between States and Nationals of other States", opened for signature at Washington on 18 March 1965,

in case both Contracting Parties become signatories to this Convention. As long as a Contracting Party which is party in the dispute has not become a Contracting State of the Convention mentioned above, the dispute shall be dealt with pursuant to the Additional Facility for the Administration of proceedings by the Secretariat of the Centre.

Article XII. Entry Into Force, Extension and Termination

1 . This Agreement shall enter into force on the latter date on which either the Contracting Party notifies the other that its internal legal requirements for the entry into force of this Agreement have been fulfilled. It shall remain in force for an initial period of ten years and, by tacit renewal, for consecutive periods of five years.

2 . Either Contracting Party may terminate this Agreement by giving prior notice in writing to the other Contracting Party of its intention to terminate the Agreement. Such written notice of termination of the Agreement shall be given, through diplomatic channels, twelve months before the date of expiry of the period of validity then current.

3 . With respect to investments made prior to the date of termination of this Agreement and to which this Agreement otherwise applies, the provisions of all of the other Articles of this Agreement shall thereafter continue to be effective for a further period of ten years from such date of termination.

Done in duplicate at _____ on _____ in Croatian, Spanish and English languages, all texts being equally authentic.

FOR THE REPUBLIC OF CROATIA

FOR THE KINGDOM OF SPAIN