

A G R E E M E N T
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF BOSNIA AND HERZEGOVINA
AND
THE GOVERNMENT OF THE REPUBLIC OF CROATIA
ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of Bosnia and Herzegovina and the Government of the Republic of Croatia (hereinafter referred to as the “Contracting Parties”), desiring to encourage mutual economic cooperation to the common benefit,

Intending to create favorable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing the need to promote and protect foreign investments with the aim to foster the economic prosperity of both Contracting Parties,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Definitions

For the purpose of this Agreement:

1. The term "investor", with respect to either Contracting Party, means:
 - a) nationals of the Contracting Parties;
 - b) legal entities, including companies, corporations, business associations and other organizations, which are constituted or otherwise duly organized under the law of that Contracting Party or have their seat, together with real economic activities, in the territory of the same Contracting Party;
 - c) legal entities established under the law of any country in which the major part of the shares is owned by the nationals of the one of the Contracting Parties or legal entities which have their seat, together with real economic activities, in the territory of that Contracting Party.
2. The term "investment" means any kind of asset invested by an investor of one Contracting Party, provided that investment has been made in accordance with the laws and regulations of the other Contracting Party and includes, *inter alia*:
 - a) movable and immovable property, pledges and rights *in rem* such as servitudes, mortgages and rights of lien;
 - b) shares, stocks or any other form of participation in companies;
 - c) claims to money or to any performance having an economic value;
 - d) copyrights, industrial property rights such as patents, utility models, industrial designs or models, trademarks or trade names, indications of origin, know-how and goodwill;
 - e) right to carry out an economic activity resulting from the approval of government authorities including permits, for example, for the exploration and exploitation of natural resources.
3. Any change in the form of an investment, admitted in accordance with laws and regulations of the Contracting Party in whose territory the investment was made, does not affect its character as an investment.
4. The term "returns" means any amounts yielded by an investment and in particular, though not exclusively: profits, principal, dividends, rewards, royalties or other income.
5. The term "territory" means the territory of the Republic of Bosnia and Herzegovina and the territory of the Republic of Croatia as well as the sea including seabed and subsoil adjacent to the outer of the territorial sea of both states over which the state concerned may exercise, in accordance with international law, its sovereign rights of exploration and exploitation of natural resources and wealth of these areas.

ARTICLE 2

Promotion and Admission of Investments

1. Each Contracting Party shall in its territory promote and admit investments by investors of the other Contracting Party in accordance with its legislation.
2. When a Contracting Party shall have admitted an investment in its territory, it shall, in accordance with its legislation, grant the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Contracting Party shall, as appropriate, seek to issue the necessary approvals related to the activities of consultants or other qualified persons of foreign nationality.

ARTICLE 3

Protection and Investment Conditions

1. Each Contracting Party shall protect in its territory investments by investors of the other Contracting Party made in accordance with its legislation and shall not affect by discriminatory or illegal measures the management, maintenance, use, enjoyment, extension, sale or, ultimately, the elimination of such investments.
2. Each Contracting Party shall ensure the fairness of investment conditions to investments of investors of the other Contracting Party in its territory. Conditions for investments shall not be less favorable than that which each Contracting Party applies to investments of its own investors or to investments of investors of any third state, whichever is more favorable.
3. The Most Favored Nation treatment shall not apply to the privileges provided by Contracting Party itself to investors of third states on the basis of their membership or association in a free trade area, customs union, common market or under other multilateral agreements, which the other Contracting Party is not a party.

ARTICLE 4

Expropriation and Compensation

1. Neither Contracting Party shall take measures of expropriation, nationalization or other measures of equal importance to investments by investors of the other Contracting Party, unless the measures are taken in the public interest, under due process of law, and if adequate compensation for expropriated property is provided.

Such compensation shall correspond to the market value of the expropriated investment immediately before the expropriation procedure was published, and must include interest

calculated on the basis of six-month LIBOR from the date when the expropriation was carried out, and must be fully transferable.

The amount of compensation shall be determined in the currency convertible and freely transferable and paid without undue delay to the person entitled regardless of his place of residence or temporary residence.

A transfer shall be deemed to be made "without undue delay", which means period as is normally required for the completion or transfer and shall commence on the day on which the relevant request has been submitted and may not exceed three months.

2. Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war, other armed conflict, a state of national emergency, riot, insurrection or unrest shall have a right to compensation in the form of indemnification, compensation or other forms of reimbursement, under the conditions which cannot be less favorable than that accorded to its own investors or to investors of any third state.

Resulting payments shall, whenever possible, be transferable without delay, in the convertible and freely transferable currency.

3. Investors referred to in Article 1, paragraph 1, point c) of this Agreement can not apply for compensation under paragraphs 1 and 2 of this Article, if the compensation was paid pursuant to the provisions of other agreement on protection of investments which has concluded a Contracting Party to whose territory investment was made.

ARTICLE 5

Transfer

1. Each Contracting Party, in whose territory investments have been made by investors of the other Contracting Party shall permit to those investors a free transfer of the payments relating to these investments, particularly of:
 - a) The capital and additional sums necessary for the maintenance and development of the investment;
 - b) Gains, profits, interests, dividends and other current income;
 - c) Funds in repayment of loans regularly contracted and documented and directly related to a specific investment;
 - d) Royalties and fees;
 - e) The proceeds from a total or partial liquidation of an investment;
 - f) Compensations provided for in Article 4 of this Agreement;

- g) The earnings of nationals of one Contracting Party who are allowed to work in connection with an investment in the territory of the other Contracting Party.
2. Transfers shall be executed and accounted for without delay, in the currency in which the investment is made or in any other convertible currency acceptable to the investor, but at the exchange rate of the central bank of the Contracting Party on the date of transfer, in accordance with the procedures prescribed by the Contracting Party in whose territory investment is made, provided that they do not include denial, temporary delay or denaturalization of such a transfer.
3. The Contracting Parties agree that the conditions in accordance with the execution of the transfer referred to in paragraphs 1 and 2 of this Article shall not be less favorable than the conditions agreed for the transfer arising from investments made by investors of any third state.

ARTICLE 6

Subrogation

1. If a Contracting Party or its designated agency has made a payment to any of its investors under a guarantee or insurance in accordance with the Investment Agreement, the other Contracting Party shall recognize the validity of such a transfer of rights (subrogation) on behalf of the Contracting Party or its agencies in respect to all rights of previous investor.

Contracting Party or its designated agency to which the investors rights are transferred, shall be entitled to the same rights as an investor, and to ensure it, must assume and perform all obligations arising from insured investments.

2. In the case of transfer of rights (subrogation) as defined in paragraph 1 of this Article, the investor shall not pursue a claim unless authorized to do so by the Contracting Party or its designated agency entitled by virtue of subrogation.

ARTICLE 7

Dispute between a Contracting Party and an investor of the other Contracting Party

1. In case of dispute between one of the Contracting Parties and an investor of the other Contracting Party, the investor shall be obliged to notify in writing on such dispute, including detailed information, the host Contracting Party of the investment.

The Parties shall primarily endeavor to settle any differences arising from disputes amicably by consultation and negotiation through diplomatic channels.

2. If these disputes cannot be settled thus within six months from the date of the written notification mentioned in paragraph 1 of this Article, the latter shall be submitted, at the choice of the investors to:

- a) 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" provided that both Contracting Parties have signed it;
 - b) the ad hoc court of arbitration established under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law of other States (UNCITRAL).
3. The arbitration award shall be based on:
- a) the provisions of this Agreement;
 - b) the national law of the Contracting Party in whose territory the investment was made, including the rules relative to conflicts of law;
 - c) the rules and the universally accepted principles of international law.
4. The arbitration award shall be final and binding for both Parties to the dispute. Each Contracting Party shall execute the arbitration award under the regulations of national law.

ARTICLE 8

Disputes between the Contracting Parties

1. Disputes between the Contracting Parties regarding the interpretation and application of the provisions of this Agreement shall be settled by consultation and negotiation through diplomatic channels.
2. If Contracting Parties cannot reach an agreement on disputable issues within six months after the beginning of the dispute between themselves, the latter shall, upon request of either Contracting Party, be submitted to an arbitration tribunal which shall be constituted as follows:

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.
3. If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed by the President of the International Court of Justice upon the request of the Contracting Party which appointed its arbitrator.
4. If appointed arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.
5. If, in the cases specified under paragraphs 3 and 4 of this Article, the President of the International Court is prevented from carrying out the said function, or if he is a national

of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or if he is national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.

6. Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure. The tribunal shall reach its decisions by a majority of votes.
7. The decisions of the tribunal are final and binding for each Contracting Party.
8. Each Contracting Party shall bear its own costs related to the participation and representation in the arbitral proceedings. The costs of the chairman and remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may decide that a higher proportion of costs shall be borne by one of the Contracting Parties and this award shall be binding on both Contracting Parties.

ARTICLE 9

Consultations and Exchange of Information

Upon request by either Contracting Party, the other Contracting Party shall agree promptly to consultations on the interpretation or application of this Agreement.

Upon request by either Contracting Party, information shall be exchanged on the impact that the laws, regulations, decisions, administrative practices, procedures or policies of other Contracting Party may have on investments covered by this Agreement.

ARTICLE 10

Entry into Force

This Agreement shall enter into force on the latter date on which either Contracting Party notifies the other in writing through the diplomatic channel that its internal legal requirements for the entry into force of this Agreement have been fulfilled.

ARTICLE 11

Duration and Termination

1. This Agreement shall remain in force for a period of ten (10) years from the date of its entry into force and tacitly be extended thereafter for a further ten (10) years, unless either Contracting Party notifies the other Party through diplomatic channels of its intention to terminate the Agreement, and at least one year before the expiry of the first or any subsequent ten-year period. Notice of termination of the Agreement shall enter into force and the Agreement is considered terminated one year from the date when the other Contracting Party has received Notice of termination through diplomatic channels.

2. 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.

Done in Split on the 26 February 1996 in two originals, in Croatian language.

For
the Government of the Republic of
Bosnia and Herzegovina

Dr. Hasan Muratović
President of the Government of the
Republic of Bosnia and Herzegovina

For
the Government of the
Republic of Croatia

Zlatko Mateša
President of the Government of
the Republic of Croatia

ANNEX
TO THE AGREEMENT
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF BOSNIA AND HERZEGOVINA
AND
THE GOVERNMENT OF THE REPUBLIC OF CROATIA
ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

Article 1

The Contracting Parties agree that this Agreement shall temporarily apply only to the territory of the Federation of Bosnia and Herzegovina, while the issue of its application to the Serbian entity in Bosnia and Herzegovina shall be regulated by a separate agreement.

In Split on the 26 February 1996.

For
the Government of the
Republic of Bosnia and Herzegovina

Dr. Hasan Muratović
President of the Government of the
Republic of Bosnia and Herzegovina

For
the Government of the
Republic of Croatia

Zlatko Mateša
President of the Government of
the Republic of Croatia

For
the Government of the Federation of
Bosnia and Herzegovina

Mato Tadić
Minister of Justice of the Federation
of Bosnia and Herzegovina