

AGREEMENT BETWEEN THE REPUBLIC OF CROATIA AND THE CZECH REPUBLIC FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Republic of Croatia and the Czech Republic, hereinafter referred to as the Contracting Parties.

Desiring to intensify economic cooperation to the mutual benefit of both States,

Intending to create and maintain favourable 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" shall mean any natural or legal person who invests in the territory of the other Contracting Party.

a) The term "natural person" shall mean any natural person having the nationality of either Contracting Party in accordance with its laws.

b) The term "legal person" shall mean with respect to either Contracting Party, any entity incorporated or constituted in accordance with, and recognized as legal person by its laws, having permanent residence in the territory of one of the Contracting Party.

2. The term "investment" shall mean any kind of asset invested in connection with economic activities by an investor of one Contracting Party in the territory of the other Contracting Party, provided that they have been made in accordance with the laws and regulations of the other Contracting Party and shall include, in particular, though not exclusively:

a) movable and immovable property, as well as any other property rights, rights in rem, such as mortgages, liens, pledges and similar rights;

b) shares, stocks and debentures of companies or any other form of participation in companies;

c) claims to money or to any performance having an economic value associated with an investment;

d) intellectual and industrial property rights, including copyrights, trade marks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill associated with an investment;

e) any right conferred by laws or under contract and any licenses and permits pursuant to law, including the concessions to search for, extract, cultivate or exploit natural resources and rights granted by a public authority to carry out an economic activity.

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 effect its character as an investment.

4. The term "returns" shall mean all amounts yielded by an investment and in particular, though not exclusively, profits, interest, capital gains, shares, dividends, royalties, fees or other current income;

5. The term "territory" shall mean:

- in relation to the Republic of Croatia the land and maritime areas, including the seabed and subsoil adjacent to the outer of the territorial sea over which it exercises its sovereignty, sovereign right and jurisdiction in accordance with international law;

- in relation to the Czech Republic the land over which it exercises its sovereignty, sovereign right and jurisdiction in accordance with international law. 1

ARTICLE 2

Promotion and Admission of Investments

1. Each Contracting Party shall promote in its territory investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.

2. When a Contracting Party shall have admitted an investment in its territory, it shall grant in accordance with its laws and regulations 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.

ARTICLE 3

National and Most-Favoured-Nation Treatment

1. Each Contracting Party shall in its territory accord investments and returns of investors of the other Contracting Party treatment which is fair and equitable and not less favourable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State whichever is more favourable.

2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investment, treatment which is fair and equitable and not less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable.

3. The provisions of paragraph 1 and 2 of 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 which may be extended by the former Contracting Party by virtue of:

a) any customs union or free trade area or a monetary union or similar international agreements leading to such unions or institutions or other forms of regional cooperation to which either of the Contracting Party is or may become a Party;

b) any international agreement or arrangement relating wholly or mainly to taxation.

ARTICLE 4

Expropriation

1. Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalization or any other measure having the same nature or an equivalent effect against investments belonging to investors of the other Contracting Party, unless the measures are taken in the public interest, on a non-discriminatory basis and under due process of law and provided that provisions be made for prompt, effective and adequate compensation. Such compensation shall amount to the market value of the expropriated investment immediately before the expropriation or the impending expropriation became public knowledge, shall include interest from the date of expropriation to the date of payment and be freely transferable.

2. The amount of compensation shall be settled in the currency convertible and freely transferable and paid without undue delay to the person entitled. A transfer shall be deemed to be made "without undue delay" if effected within such period as is normally required for the completion or transfer formalities. The said period shall commence on the day on which the relevant request has been submitted and may not exceed three months.

3. The investor affected shall have a right, to prompt review, by a judicial or other independent authority of the Contracting Party in whose territory the investment was made, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.

4. The provisions of paragraph 1 of this Article shall also apply where 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.

ARTICLE 5

Compensation for Losses

1. Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favourable 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.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in any of the events 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;
- 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 just and adequate compensation for the losses sustained during the period of the requisitioning or as a result of the destruction of the property. Resulting payments shall be freely transferable in freely convertible currency without delay.

ARTICLE 6

Transfer

1. Each Contracting Party, in whose territory investments have been made by investors of the other Contracting Party shall guarantee 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;
- g) the earnings of nationals of one Contracting Party who are allowed, in accordance with its laws and regulations, to work in connection with an investment in the territory of the other Contracting Party.

2. Transfers shall be effected without any restriction and undue delay in a freely convertible currency in a prevailing exchange rate at the date of the transfer, unless otherwise agreed.

ARTICLE 7

Subrogation

1. If a Contracting Party or its designated agency makes payment to its own investors under a guarantee it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

a) the assignment, whether under the law or pursuant to a legal transaction in that country, of any right or claim by the investor to the former Contracting Party or its designated agency, as well as,

b) that the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and shall assume the obligations related to the investment.

2. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

ARTICLE 8

Settlement of Investment Disputes between One Contracting Party and an Investor of the Other Contracting Party

1. Disputes between one of the Contracting Parties and an investor of the other Contracting Party shall be notified in writing, including detailed information, by the investor to the host Contracting Party of the investment. Any dispute between one Contracting Party and an investor of the other Contracting Party shall be settled amicably by consultation and negotiation through diplomatic channels.

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

- the ad hoc court of arbitration established under the Arbitration Rules of Procedure of the United Nations Commission for 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".

3. The arbitration award shall be based on:

- the provisions of this Agreement;

- the national law of the Contracting Party in whose territory the investment was made, including the rules relative to conflicts of law;

- the rules and the universally accepted principles of international law.

4. The arbitration decisions shall be final and binding for the Parties in conflict.

ARTICLE 9

Settlement of 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 both Contracting Parties cannot reach an agreement 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 upon the request of that Contracting Party by the President of the International Court of Justice.

4. If both 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 of Justice 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 the costs of its own member of the tribunal and of its 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, however, 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 10

More Favourable Provisions

If the domestic law 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 11

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 or procedures or policies of other Contracting Party may have on investments covered by this Agreement.

ARTICLE 12

Applicability of this Agreement

The provisions of this Agreement shall apply to future investments made by investors of one Contracting Party in the territory of the other Contracting Party, and also to the investments existing in accordance with its laws and regulations valid on the date of this Agreement coming into force.

ARTICLE 13

Entry into Force

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

ARTICLE 14

Duration and Termination

1. This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, one year before the expiry of the initial or any subsequent periods, either Contracting Party notifies the other in writing of its intention to terminate the Agreement.

2. In respect to investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall continue to be effective for a period of ten years from the date of termination of this Agreement.

IN WITNESS WHEREOF the undersigned duly authorized thereto have signed this Agreement.

Done in.....on.....in two originals, in Croatian, Czech and English language, all texts being equally authentic. In a case of divergency of interpretation, the English text shall prevail.

FOR THE REPUBLIC OF CROATIA

FOR THE CZECH REPUBLIC