AGREEMENT BETWEEN SERBIA AND MONTENEGRO AND THE STATE OF KUWAIT ON MUTUAL PROMOTION AND INVESTMENT PROTECTION

Serbia and Montenegro and the State of Kuwait (hereinafter: the Contracting Parties);

Desiring to create favorable conditions for the development of mutual economic co-operation, and in particular for the investments of investors of one Contracting Party in the territory of the other Contracting Party;

Convinced that the mutual encouragement and protection of such investments will contribute to the improvement of business initiative and the increase of prosperity in both Contracting Parties;

Have agreed on the following:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means any asset or right in the territory of a Contracting Party that is owned or directly or indirectly controlled by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the other. The Parties shall, in particular, though not exclusively, include:

(a) participation, shares, bonds, stocks and other forms of securities, loans and any form of participation in the Company;

(b) cash receivables and receivables from any other assets or derivatives under an investment contract that have economic value;

(c) intellectual property rights, such as copyrights and other related rights and industrial property rights, such as trademarks, patents, licenses, industrial designs, and molds or models and technical processes, know-how, trade secrets, trade names and "goodwill";

(d) any right under law, contract or any permit or approval of a date pursuant to law, including the right to explore, explore, extract or use natural resources and the right to undertake other economic or commercial activities or to provide services in connection with by investing;

(e) any tangible or intangible, movable or immovable property as well as other related property rights, such as mortgages, pledges, or guarantees.

The term "investment" will apply to both "returns" retained for reinvestment and "liquidation" proceeds as defined below.

Any change in the form in which funds or rights are invested or reinvested will not affect their character as investments.

2. The term "investor" means:

(a) a natural person who is a national of that Contracting Party in accordance with its applicable laws;

(b) The Government of that Contracting Party;

(c) any legal person established or established under the laws and regulations of that Contracting Party which has its head office in the territory of that Contracting Party and which makes an investment in the territory of the other Contracting Party and includes institutions, development funds, agencies, foundations, and other statutory institutions and authorities and companies.

3. The term "returns" means the amounts yielded by an investment, whatever the form in which they are paid, and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties, management, technical assistance, patents, payment license rights, and other similar fees.

4. The term "liquidation" means any sale made for the purpose of giving up an investment in whole or in part.

5. The term "territory" means:

a) in the case of Serbia and Montenegro: Areas covered by land borders as well as the sea area, seabed, and lands immediately below the area outside its territorial sea in which Serbia and Montenegro has sovereign rights and jurisdiction; in accordance with its laws and regulations and international law;

b) in the case of the State of Kuwait: the territory of the State of Kuwait including any area outside the territorial sea which, in accordance with international law, is or may be determined under the laws of the State of Kuwait, designated as an area over which the State of Kuwait has sovereign rights and jurisdiction.

6. The term "freely convertible currency" means any currency designated from time to time by the International Monetary Fund as a freely usable currency in accordance with the Statute of the International Monetary Fund and any amendments thereto.

7. The term "without delay" means such period as is normally required to complete the necessary transfer formalities. The said period shall begin on the date of submission of the request for transfer and may not, in any case, exceed one month.

Article 2. Admission and Promotion of Investments

1. Each Contracting Party shall, in its territory and in accordance with its applicable laws and regulations, approve and encourage investments by investors of the other Contracting Party.

2. Each Contracting Party shall, in respect of approved investments in its territory, grant to such investments all necessary permits, approvals, approvals, licenses, and authorizations to the extent and under the conditions determined by its laws and regulations.

3. The Contracting Parties may consult with each other in any manner they deem appropriate, in order to encourage and provide favorable investment opportunities within their respective territories.

4. Each Contracting Party shall, depending on its laws and regulations relating to the entry, residence, and work of natural persons, examine in good faith and duly consider, regardless of nationality, the requirements of key personnel, including managerial and technical staff, employed. to enter, temporarily reside and work on its territory for the purpose of investing in its territory. Close family members of such key personnel shall also be accorded similar treatment with regard to entry and temporary stay in the Host Party.

Article 3. Investment Protection

1. Investments of investors of either Contracting Party shall at all times enjoy fair and equitable treatment and full protection and security in the territory of the other Contracting Party, in a manner consistent with recognized principles of international law and the provisions of this Agreement. Neither Contracting Party shall in any way cause unreasonable and discriminatory measures to prejudice the use, management, administration, business, dissemination, or sale or other disposition of the investment.

2. Each Party shall make available to the public its laws, regulations, procedures, directives, guidelines, administrative and judicial decisions for public use, as well as international agreements relating to, or likely to affect, the implementation of the provisions of this Agreement or investments. other Contracting Parties in its territory.

3. Each Contracting Party shall grant to investors of the other Contracting Party the right of access to its courts, administrative tribunals, and agencies and to all other bodies exercising judicial power and the right to authorize, at its discretion, persons who are competent to establish claims under applicable laws and regulations, and the legal enforcement of rights in respect of their investments.

4. Neither Contracting Party may, as a condition of acquiring, expanding, using, managing, conducting, or trading investments of investors of the other Contracting Party, introduce mandate measures requiring or restricting the purchase of materials, energy, fuels, or means of production. , transport or any work or restricting the marketing of products inside or outside its territory, or any other measures that discriminate against investments of investors of the other Contracting Party in favor of investments of its own investors or investors of third countries. In addition, in the case of a host Contracting Party, investments shall not be subject to performance requirements that may be detrimental to their implementation or may adversely affect their use, management, administration, trade, expansion, sale, or other disposition.

5. Investments of investors of either Contracting Party shall not be subject to seizure, confiscation, or any similar measures

with the host Contracting Party except in accordance with the law and in accordance with the principles applicable in international law and other provisions relating to by this agreement.

6. Each Contracting Party shall honor any obligation or promise made in respect of investments by investors of the other Contracting Party in its territory.

Article 4. Treatment of Investments

1. With respect to the use, management, administration, operation, expansion or sale or other disposition of investments made in its territory by investors of the other Contracting Party, each Contracting Party shall provide treatment no less favorable than that accorded to, in similar situations, provides investments of its own investors or investors of any third country, whichever is more favorable for those investments.

2. However, the provisions of this Article shall not be construed to oblige one Contracting Party to give investors of the other Contracting Party any advantage in respect of treatment, preferences, or privileges arising from:

(a) a customs union, an economic union, a free trade area, a monetary union; a union or from another form of regional economic arrangement or other similar international agreement, to which one or the other Contracting Party is or may become a signatory;

(b) any international, regional or bilateral agreement or other similar arrangement relating wholly or mainly to taxation.

Article 5. Compensation for Losses

1. Except where Article 6 applies, when the investments of investors of either Contracting Party suffer losses as a result of war or other armed conflict, state of emergency, insurrection, civil unrest, uprising, unrest or similar events in the territory of the other Party Contracting Party, the other Contracting Party shall provide him with treatment, in respect of reimbursement, indemnification, compensation or other means of settling losses, which shall not be less favorable than that granted by the other Contracting Party to its own investors or investors of any third country, whichever is more favorable for the investor.

2. Notwithstanding paragraph 1, an investor of one Contracting Party who, in any of the cases referred to in that paragraph, suffers losses in the territory of the other Contracting Party as a result of:

(a) the seizure of its investments or part thereof by the armed forces or authorities;

(b) the destruction of its investments or any part thereof by the armed forces or authorities which did not arise in the fighting or was not caused by the necessity of the situation,

a refund or compensation shall be granted, in one case or another without delay, in an appropriate amount and effective.

Article 6. Expropriation

1. (a) Investments of investors of one Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated or subjected to direct or indirect measures equal to nationalization or expropriation (hereinafter collectively referred to as "expropriation") by the other Party, except in the public interest related to the internal needs of that Party with compensation to be carried out without delay, in an appropriate amount and effectively, provided these measures shall be taken on a non-discriminatory basis and in accordance with the applicable law in force.

(b) The amount of such compensation shall correspond to the actual value of the expropriated investment and shall be determined and calculated in accordance with internationally recognized valuation principles based on the fair market value of the expropriated investment at the time immediately prior to or before the forthcoming expropriation became public knowledge. from what happened before (hereinafter: the date of the assessment). Such compensation will include all relevant factors and circumstances, such as invested capital, nature and duration of the investment, replacement value, increase in the value of the investment, current income, discounted cash flow, book value and goodwill.

Such fee shall be calculated in a freely convertible currency on the basis of the prevailing market exchange rate for that currency on the valuation date and shall include interest at a commercial rate determined on a market basis, however in no case less than the prevailing LIBOR interest rate or equivalent values for the period from the date of expropriation to the date of payment. The amount of the finally determined fee will be immediately payable and freely transferable as well as remitted without undue delay to the investor.

2. In the light of the principles set out in paragraph 1 and without prejudice to the investor's rights under Article 9 of this Agreement, the aggrieved investor shall have the right to have his case considered without delay by a judicial and other competent or independent authority and the expropriating Party. including the assessment of such an investment and, consequently, the payment of a fee.

3. For the purposes of this Agreement, direct or indirect measures of expropriation shall mean the freezing or blocking of funds, the collection of excessive arbitration fees, the forced sale of all or part of an investment, any State intervention, a harmful measure, the denial of management or control of any kind. to, or a measure which results in the loss or damage of the economic value of such an investment, or such a measure or measures which, as a consequence of the action, must be equivalent to expropriation.

Article 7. Transfer of Investment-related Payments

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of investment-related payments within and outside its territory, including the transfer of:

(a) initial capital and any additional capital for investment maintenance, management, and development;

(b) returns;

(c) payments under a contract, including amortization of principal and payments of accrued interest incurred pursuant to the Investment Loan Agreement;

(d) royalties and royalties for the rights referred to in Article 1, paragraph 3;

(e) proceeds from the sale or liquidation of all or any part of the investment;

(f) unspent salaries and other cash benefits of personnel engaged from abroad in connection with the investment;

(g) payment of fees within the meaning of Art. 5 and 6; (h) the payments referred to in Article 8; (i) payments arising from the settlement of disputes, within the meaning of Art. 9 and 10. 2.

Transfers of payments referred to in paragraph 1 shall be made without delay (except in the case of in-kind revenue) in a freely convertible currency. In the event of any delay in the execution of the requested transfer, the aggrieved investor shall be entitled to interest during the period of such delay.

3. Transfers shall be made at the "spot" market exchange rate prevailing in the domestic Contracting Party on the day of the transfer for the currency being transferred. In the absence of a foreign exchange market, the exchange rate to be applied will be the last exchange rate for currency conversions which is most favorable for special drawing rights.

Article 8. Subrogation

1. If a Contracting Party or its designated institution (the "Indemnifying Party") makes a payment to its own investors on the basis of the insurance or guarantee it has assumed in respect of an investment in the territory of the other Contracting Party ("Host States"), the Contracting Party shall recognize:

(a) the transfer by law or legal transaction of all rights and claims arising out of such investment to the Indemnifying Party;

(b) the right of the indemnifying Party to exercise, under subrogation, all such rights and to realize claims and assume all obligations relating to the investment.

2. The indemnified Party shall in all circumstances have the same treatment for:

(a) acquired rights and claims and obligations assumed through the cession referred to in paragraph 1 above;

(b) all payments received pursuant to these rights and claims, to which the original investor was entitled under this Agreement in respect of the investment in question.

Article 9. Settlement of Disputes between a Contracting Party and an Investor

1. Disputes between a Contracting Party and investors of the other Contracting Party concerning the investment of the latter in the territory of the former shall be settled amicably as far as possible.

2. If these disputes cannot be settled by negotiation within six months from the date on which one or the other party to the

dispute has requested amicable settlement by giving written notice to the other party, the dispute shall be submitted at the discretion of the investor party to the dispute, to one of the following ways:

(a) by the courts or administrative tribunals of the Contracting Party to the dispute;

(b) in accordance with any applicable, previously agreed dispute settlement procedure;

(c) by international arbitration in accordance with the following paragraphs of this article.

(1) (a) The International Center for the Settlement of Investment Disputes (the "Center") established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature in Washington on March 18, 1965 (the "Washington Convention"), if both Contracting Parties are signatories to the Washington Convention and if the Washington Convention is applicable to the dispute;

(b) the Center, in accordance with the rules governing the Additional Facility of the Administrative Procedure by the Secretariat of the Center ("Regulations on Additional Facility");

(2) An arbitral tribunal established under the Arbitration Rules ("Rules") of the United Nations Commission on Commercial Law ("UNCITRAL");

(3) According to the arbitration rules of the International Chamber of Commerce (ICC).

3. Notwithstanding the fact that the applicant may have filed a dispute for compulsory arbitration under paragraph 2, he may, before the institution of the arbitral tribunal or during the proceedings, request from the judicial or administrative tribunals of the Contracting Party to the dispute a temporary injunction to protect his rights and interest, provided that this does not include a claim for payment of any compensation, in accordance with national laws and regulations.

4. Each Contracting Party hereby gives its unconditional consent to submit the investment dispute to compulsory arbitration, in accordance with the choice of the investor pursuant to paragraph 2 (1) and (2).

5. (a) The consent given in paragraph 4, together with the consent given in paragraph 2, satisfies the requirement for written consent of the parties to the dispute within the meaning of Chapter II of the Washington Convention, Rules on Additional Facility, Article II of the UN Convention on Recognition and Enforcement of Foreign Arbitral Awards, done at New York on June 10, 1958 (the "New York Convention") and Article 1 of the UNCITRAL Arbitration Rules.

(b) Any arbitration under this article, which may be mutually agreed upon by the parties to the dispute, shall be conducted in a State Party to the New York Convention. Claims submitted to the arbitration submitted below shall be deemed to arise from a commercial relationship or transaction within the meaning of Article 1 of the New York Convention.

(c) Neither Contracting Party shall grant diplomatic protection or make an international complaint in respect of any dispute submitted to arbitration, unless the other Contracting Party has failed to agree and abide by the judgments rendered in such dispute. However, diplomatic protection within the meaning of this subparagraph shall not include informal diplomatic exchanges of views whose sole purpose is to facilitate the settlement of a dispute.

6. The arbitral tribunal established pursuant to this article shall settle the issues in dispute, in accordance with these legal rules which may be agreed upon by the parties to the dispute. In the absence of such an agreement, the law of the Contracting Party to the dispute shall apply, including its conflict of laws rules and such accepted rules of international law as may be applicable, also taking into account the relevant provisions of this Agreement.

7. For the purposes of Article 25 (2) (b) of the Washington Convention, an investor, other than a natural person, who is a national of a Contracting Party to the dispute on the date of the written consent referred to in paragraph (6) and when, before the dispute between him and the Contracting Party, shall be controlled by investors of the other Contracting Party, shall be treated as an investor of the other Contracting Party and shall be treated in accordance with Article 1 (6) of the Additional Allowance Rules.

8. Arbitral awards may include judgments on the payment of interest which are final and binding on the parties to the dispute. Each Contracting Party shall without delay enforce any such decision of the court and issue regulations for the effective enforcement of such judgments in its territory.

9. In any proceedings, court, arbitration, or other or enforcement of a decision or judgment, concerning an investment dispute between a Contracting Party and an investor of the other Contracting Party, the Contracting Party shall not invoke in its defense, its sovereign immunity. Any counterclaim or set-off right cannot be based on the fact that the interested investor has received or will receive under the insurance contract, compensation or other indemnities for all or part of the presumed indemnity from any third party, whether public or private, including the other Contracting Party and its

subsidiaries, agencies or funds.

Article 10. Settlement of Disputes between the Contracting Parties

1. The Contracting Parties shall, as far as possible, settle disputes concerning the interpretation or application of this Agreement through consultations or other diplomatic channels.

2. If the dispute cannot be settled within six months from the date on which either Contracting Party has requested such consultations or the use of other diplomatic channels, and unless the Contracting Parties agree otherwise in writing, either Contracting Party may, by giving written notice to the other Contracting Party, to submit the dispute to an ad hoc arbitral tribunal in accordance with the following provisions of this Article.

3. The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one member of the tribunal, and these two members shall agree on a national of the third State to be the chairman of the arbitral tribunal, appointed by the two Contracting Parties. Such members shall be appointed within two months and the President within four months from the date on which either Contracting Party has notified the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.

4. If the time limits laid down in paragraph (3) above are not met, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either Contracting Party, or if he is otherwise prevented from performing the said function, the Vice-President of the International Court of Justice shall be required to make the necessary appointments. If the Vice-President of the International Court of Justice is a national of either Contracting Party or is otherwise prevented from performing the said function, the next senior member of the International Court of Justice who is not a national of either Contracting Party shall be requested to make the necessary appointments.

5. The arbitral tribunal shall reach its decisions by a majority of votes. Such decision shall be taken in accordance with this Agreement and those accepted rules of international law which may be applicable and shall be final and binding on both Parties. Each Contracting Party shall bear the costs of a member of the arbitral tribunal appointed by that Contracting Party, as well as the costs of his participation in the arbitral proceedings. The costs of the President, as well as all other costs of the arbitration proceedings, shall be borne equally by both Contracting Parties.

Article 11. Relations between the Contracting Parties

The provisions of this Agreement shall apply regardless of whether there are diplomatic or consular relations between the Contracting Parties.

Article 12. Consultations

The authorized representatives of the Contracting Parties shall hold consultations, whenever necessary, on matters relating to the interpretation and application of this Agreement. Consultations shall be held on the proposal of one of the Contracting Parties, at a time and place agreed through diplomatic channels.

Article 13. Application of other Provisions

If the legislation of either Contracting Party or obligations under international law which currently exist or which may be determined later between the Contracting Parties, in addition to this Agreement, contains rules, whether general or special, The Contracting Parties shall accord treatment more favorable than that accorded to this Agreement, and such rules shall, to the extent that they are more favorable to the investor, take precedence over this Agreement.

Article 14. Scope of this Agreement

This Agreement shall apply to all investments, whether existing or realized after the date of its entry into force, by investors of either Contracting Party in the territory of the other Contracting Party and shall apply from the date of entry into force of this agreement.

Article 15. Entry Into Force

Each Contracting Party shall notify each other in writing that the constitutional requirements for the entry into force of this Agreement have been fulfilled, and the Agreement shall enter into force on the thirtieth day after the date of receipt of the

last notification.

Article 16. Duration and Termination

1. This Agreement shall remain in force for a period of thirty (30) years and shall continue in force thereafter for a similar period or periods, unless at least one year before the expiration of the initial or any subsequent period, either or the other Contracting Party shall notify the other Contracting Party in writing of its intention to terminate this Agreement.

2. In the case of investments made before the date of entry into force of the notice of termination of this Agreement, the provisions of this Agreement shall continue to apply for a period of twenty (20) years from the date of termination of this Agreement.

In witness whereof the undersigned, being duly authorized thereto, have signed this Agreement.

Done at Kuwait, this 19th day of January 2004, corresponding to the 27th Thualkada of 1424 in two originals in the Arabic, Serbian and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For Serbia and Montenegro

Goran Svilanovic, s. r.

Minister of Foreign Affairs

For the State of Kuwait

Dr. Mohamed Sabah Al-Salem Al-Sabah, s. r.

Minister of Foreign Affairs