AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CROATIA AND THE GOVERNMENT OF THE KINGDOM OF DENMARK CONCERNING THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

Preamble

The Government of the Republic of Croatia and the Government of the Kingdom of Denmark, hereinafter referred to as the Contracting Parties,

Desiring to create favourable conditions for investments in both countries and to intensify the co-operation between private enterprises in both countries with a view to stimulating the productive use of resources,

Recognising that a fair and equitable treatment of investments on a reciprocal basis will serve this aim,

Having resolved to conclude the Agreement on the promotion and reciprocal protection of investments,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement,

1. The term »investment« means every kind of asset and shall include in particular, but not exclusively:

(i) Movable and immovable property, as well as any other rights in rem such as leases, mortgages, liens, pledges, privileges, guarantees and any other similar rights;

(ii) A company or business enterprises, or shares, stock or other forms of participation in a company or business enterprise and bonds and debt of a company or business enterprise;

(iii) Claims to money and claims to performance pursuant to contract having an economic value;

(iv) Intellectual property rights, including copyrights, patents, trade names, trademarks, goodwill, know-how and any other similar rights;

(v) Concessions or other rights conferred by law or under contract, including concessions to search for, extract or exploit natural resources.

2. Any change in the form in which an asset is invested or reinvested does not affect its character as an investment.

3. The term »returns« means the amounts yielded by an investment and includes in particular, though not exclusively, profit, interest, capital gains, dividends, royalties or fees. Reinvested returns shall enjoy the same treatment as the original investment.

4. The term »investor« means with regard to each Contracting Party:

a) Natural persons having the citizenship or nationality of or who are permanently residing in each Contracting Party in accordance with its law;

b) Any entity established and recognised as a legal person in accordance with the law of that Contracting Party, such as companies, firms, associations, development finance institutions, foundations or similar entities irrespective of whether their liabilities are limited and whether or not their activities are directed at profit.

5. The term »territory« means:

- 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.

- with respect to the Kingdom of Denmark: the territory under its sovereignty as well as the exclusive 200 nautical mile broad maritime zones over which the Kingdom of Denmark exercises, in conformity with international law, sovereign rights of jurisdiction.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall admit investments by investors of the other Contracting Party in accordance with its legislation and administrative practice and encourage such investments, including facilitating the establishment of representative offices.

2. Investments of investors of each Contracting Party shall at all times 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.

3. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

Article 3. Treatment of Investments

1. Each Contracting Party shall in its territory accord to investments made by investors of the other Contracting Party fair and equitable treatment which in no case shall be less favourable than that accorded to its own investors or to investors of any third state, whichever is the more favourable from the point of view of the investor.

2. Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investment, fair and equitable treatment which in no case shall be less favourable than that accorded to its own investors or to investors of any third State, whichever of these standards is the more favourable from the point of view of the investor.

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: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 existing or future customs union or economic union, free trade area or similar international agreement;

b) Any international agreement or arrangement or domestic legislation, completely or partially related to taxation.

Article 4. Expropriation

1. Investments of investors of each Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as »expropriation«) in the territory of the other Contracting Party except for expropriations made in the public interest, on a basis of non-discrimination, carried out under due process of law, and against prompt, adequate and effective compensation.

2. Such compensation shall amount to the fair market value of the investment expropriated immediately before the expropriation or impending expropriation became known in such a way as to affect the value of the investment (hereinafter referred to as the »valuation date«).

3. Such fair market value shall be calculated in a freely convertible currency on the basis of the market rate of exchange existing for that currency on the valuation date. Compensation shall be paid promptly and include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment.

4. The investor affected shall have a right to prompt review under the law of the Contracting Party making the expropriation, by a judicial or other competent and independent authority of that Contracting Party, of its case, of the valuation of its

investment, and of the payment of compensation, in accordance with the principles set out in paragraph 1 of this Article.paragraph 1 of this Article.

5. When a Contracting Party expropriates the assets of a company or an enterprise in its territory, which is incorporated or constituted under its law, and in which investors of the other Contracting Party have an investment, including through shareholding, the provisions of this Article shall apply to ensure prompt, adequate and effective compensation for those investors for any impairment or diminishment of the fair market value of such investment resulting from the expropriation.

Article 5. 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, or riot 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 favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever of these standards is the more favourable from the point of view of the investor.

2. Without prejudice to paragraph 1 of this Article, an investor of a Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in the area of another Contracting Party resulting from:paragraph 1 of this Article, an investor of a Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in the area of another Contracting Party resulting from:

a) Requisitioning of its investment or part thereof by the latter's forces or authorities, or

b) Destruction of its investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

Shall be accorded restitution or compensation, which in either case shall be prompt, adequate and effective.

Article 6. Transfers

1. Each Contracting Party shall with respect to investments in its territory by investors of the other Contracting Party allow the free transfer into and out of its territory of:

a) The initial capital and any additional capital for the maintenance and development of an investment;

b) The invested capital or the proceeds from the sale or liquidation of all or any part of an investment;

c) Interests, dividends, profits and other returns realised;

d) Payments made for the reimbursement of the credits for investments, and interests due,

e) Payments derived from rights enumerated in Article 1, paragraph 1, (iv) of this Agreement;(iv) of this Agreement;

f) Unspent earnings and other remunerations of personnel engaged from abroad in connection with an investment;

g) Compensation, restitution, indemnification or other settlement pursuant to Articles 4 and 5 of this Agreement.Articles 4 and 5 of this Agreement.

2. Transfers of payments under paragraph 1 of this Article shall be effected without delay and in a freely convertible currency.paragraph 1 of this Article shall be effected without delay and in a freely convertible currency.

3. Transfers shall be made in a freely convertible currency at the spot market rate of exchange applicable on the day of transfer for the currency to be transferred.

4. In the absence of a market for foreign exchange, the rate to be used will be the most recent rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is more favourable to the investor.

Article 7. Subrogation

If one Contracting Party or its designated agency makes a 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 recognise:

a) The assignment, whether under the law or pursuant to a legal transaction, of any right or claim by the investor to the former Contracting Party or to its designated agency; and

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.

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

1. Any dispute concerning an investment between an investor of one Contracting Party and the other Contracting Party shall, if possible, be settled amicably.

2. If any such dispute cannot be settled within six months following the date on which the dispute has been raised by the investor through written notification to the Contracting Party, each Contracting Party hereby consents to the submission of the dispute, at the investor's choice, for resolution by international arbitration to one of the following fora:

i) The International Centre for Settlement of Investment Disputes (ICSID) for settlement by arbitration under the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States provided both Contracting Parties are parties to the said Convention; orThe International Centre for Settlement of Investment Disputes (ICSID) for settlement by arbitration under the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States provided both Contracting Parties are parties to the said Convention; or

ii) The Additional Facility of the Centre, if the Centre is not available under the Convention; or

iii) An ad hoc tribunal set up under Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The appointing authority under the said rules shall be the Secretary General of ICSID; orArbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The appointing authority under the said rules shall be the Secretary General of ICSID; or

iv) By arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC).Rules of Arbitration of the International Chamber of Commerce (ICC).

3. For the purpose of this Article and Article 25(2)(b) of the said Washington Convention, any legal person which is constituted in accordance with the legislation of one Contracting Party and which, before a dispute arises, was controlled by an investor of the other Contracting Party, shall be treated as a national of the other Contracting Party.

4. Any arbitration under paragraph 2 ii) – iv) of this Article shall, at the request of either party to the dispute, be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 (the New York Convention).paragraph 2 ii) – iv) of this Article shall, at the request of either party to the dispute, be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 (the New York Convention).

5. The consent given by each Contracting Party in paragraph (2) and the submission of the dispute by an investor under the said paragraph shall constitute the written consent and written agreement of the parties to the dispute to its submission for settlement for the purposes of Chapter II of the Washington Convention (Jurisdiction of the Centre) and for the purpose of the Additional Facility Rules, Article 1 of the UNCITRAL Arbitration Rules, the Rules of Arbitration of the ICC and Article II of the New York Convention.paragraph (2) and the submission of the dispute by an investor under the said paragraph shall constitute the written consent and written agreement of the parties to the dispute to its submission for settlement for the purposes of Chapter II of the Washington Convention (Jurisdiction of the Centre) and for the purpose of the Additional Facility Rules, Article 1 of the UNCITRAL Arbitration Rules, the Rules of Arbitration of the ICC and Article II of the New York Convention.

6. In any proceeding involving an investment dispute, a Contracting Party shall not assert, as a defense, counterclaim or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received pursuant to an insurance or guarantee contract.

7. Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out without delay the provisions of any such award and provide in its territory for the enforcement of such award.

Article 9. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled as far as possible by negotiations.

2. If a dispute according to paragraph 1 of this Article cannot be settled within six (6) months, it shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal.paragraph 1 of this Article cannot be settled within six (6) months, it shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal.

3. Such arbitral tribunal shall be constituted on an ad hoc basis as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third State as their chairman to be appointed by the two Contracting Parties. Such arbitrators shall be appointed within two (2) months from the date one Contracting Party has informed the other Contracting Party, of its intention to submit the dispute to an arbitral tribunal and the chairman shall be appointed within two (2) months following the appointment of the two arbitrators.

4. If the periods specified in paragraph 3 of this Article are not observed, either Contracting Party may, in the absence of any other relevant arrangement, 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 of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-President or in case of his inability the member of the International Court of Justice next in seniority should be invited under the same conditions to make the necessary appointments.paragraph 3 of this Article are not observed, either Contracting Party may, in the absence of any other relevant arrangement, 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 of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-President or in case of his inability the member of the International Court of Justice next in seniority should be invited under the same conditions to make the necessary appointments.

5. The tribunal shall establish its own rules of procedure.

6. The arbitral tribunal shall reach its decision on the basis of the present Agreement and applicable rules of international law. It shall reach its decision by a majority of votes; the decision shall be final and binding.

7. Each Contracting Party shall bear the costs of its own member and of its legal representation in the arbitration proceedings. The costs of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The tribunal may, however, in its award determine another distribution of costs.

Article 10. Consultations

Each Contracting Party may propose to the other Party to consult on any matter affecting the application of this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a place and at a time agreed upon through diplomatic channels.

Article 11. Applicability of this Agreement

The provisions of this Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party prior to or after the entry into force of the Agreement. It shall, however, not be applicable to divergences or disputes, which have arisen prior to its entry into force.

Article 12. Amendments

At the time of entry into force of this Agreement or at any time thereafter the provisions of this Agreement may be amended in such manner as may be agreed between the Contracting Parties. Such amendments shall enter in force when the Contracting Parties have notified each other that the constitutional requirement for the entry into force has been fulfilled.

Article 13. Territorial Extension

This Agreement shall not apply to the Faroe Islands and Greenland.

The provisions of this Agreement may be extended to the Faroe Islands and Greenland as may be agreed between the Contracting Parties in an Exchange of Notes.

Article 14. Entry Into Force

This Agreement shall enter into force on the thirtieth day following the date of receipt of the latter notification through diplomatic channels by which one Contracting Party notifies the other Contracting Party that its internal legal requirements for the entry into force of this Agreement have been fulfilled.

Article 15. Duration and Denounciation

1. This Agreement shall remain in force for a period of twenty (20) years. Thereafter it shall remain in force until the expiration of twelve months from the date that either Contracting Party in writing notifies the other Contracting Party of its decision to terminate this Agreement.

2. In respect of investments made prior to the date when the notice of denounciation of this Agreement becomes effective, the provisions of Articles 1 to 11 of this Agreement shall continue to be effective for a period of twenty (20) years from the date of denounciation of this Agreement.Articles 1 to 11 of this Agreement shall continue to be effective for a period of twenty (20) years from the date of denounciation of this Agreement.

DONE at Copenhagen, on 5 July 2000, in two originals, each in the Croatian, Danish and English language, all texts being equally authentic. The text in the English language shall prevail in case of difference of interpretation.

FOR THE GOVERNMENT OF THE KINGDOM OF DENMARK Niels Helweg Petersen

FOR THE GOVERNMENT OF THE REPUBLIC OF CROATIA Goranko Fizulic