AGREEMENT BETWEEN THE COUNCIL OF MINISTERS OF THE REPUBLIC OF ALBANIA AND THE UNITED NATIONS MISSION FOR THE PROVISIONAL ADMINISTRATION OF KOSOVO (UNMIK) ON BEHALF OF THE PROVISIONAL SELF-GOVERNMENT INSTITUTIONS IN KOSOVO, FOR THE PROMOTION AND MUTUAL PROTECTION OF INVESTMENTS

The Council of Ministers of the Republic of Albania and the United Nations Mission for the Provisional Administration of Kosovo on behalf of the temporary self-governing institutions in Kosovo, hereinafter referred to as "Parties",

Wishing to intensify economic cooperation for the mutual benefit of the countries,

Aiming to create favorable conditions for investments made by investors of each Party in the territory of the other Party,

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

Have agreed as follows:

Article 1. Definitions

For purposes of this Agreement:

1. The term "investor" means:

a) a natural person who, in accordance with the law of the relevant Party, is a citizen of the Republic of Albania or a permanent resident of Kosovo and is making investments in the territory of the other Party;

b) a legal entity, including companies, associations, joint ventures and any other type of organization incorporated or created, or in other words organized in accordance with the law and rules of a Party which has its legal address, or main place of its business in the territory of this Party and is making investments in the territory of the other Party.

2. The term "investment" means any type of property, such as money or currency equivalent, owned by an investor for profit and in particular, but not exclusively, the following:

a) participation with shares, obligations of companies or associations and any other form of participation in a company;

b) claims in money or of any other form based on a contract that has economic value and participation related to an investment;

c) movable and immovable property, as well as any other rights, such as mortgages, leases, usufruct, pledges and similar rights;

d) industrial and intellectual property rights, such as patents, licenses, trademarks, trade names, as well as technical processes, know-how and goodwill;

e) the rights to undertake economic and commercial activities based on the law or a contract, including concessions for the study, research and exploitation of natural resources.

Any change in the form in which the assets are invested or reinvested will not affect their character as an investment, in case this change is carried out in accordance with the law and regulations of the Party receiving the investment.

3. The term "income" means amounts derived from an investment and includes in particular, but not exclusively, profit, dividends, interest, capital gains, bonuses and other income.

4. The term "territory" means:

- in relation to the Republic of Albania, the territory under the sovereignty of the Republic of Albania, including territorial waters and the maritime zone and continental shelf, over which the Republic of Albania, in accordance with its national laws and regulations and international law, exercises its rights sovereign and legal;

- in relation to Kosovo, the territory under the temporary administration of UNMIK as defined in resolution 1244 (1999) on June 10, 1999 of the United Nations Security Council.

Article 2. Promotion and Admission

1. Each Party will encourage and create favorable conditions for investors of the other Party to make investments in its territory and will accept these investments in accordance with its legislation and rules.

2. When a Party has accepted an investment in its territory, it will grant, in accordance with its laws and regulations, the necessary permits that are related to this investment and the execution of licensing agreements and contracts for technical assistance, commercial or administrative. Each Party is obliged to issue, if required, the necessary authorizations related to the consulting activity and to other qualified persons.

Article 3. Protection

1. Investments made by investors of one Party in the territory of the other Party shall, at all times, be accorded fair and equitable treatment and shall enjoy full legal protection and security. In no event shall a Party accord to such investments less favorable treatment than that required by international law, as defined in Articles 4 and 8 of this Agreement.

"2. Neither Party shall hinder in any way, through arbitrary or discriminatory measures, the operation, management, maintenance, use, enjoyment, sale and, if applicable, the liquidation of these investments referred to in paragraph 1 of this article. Each Party shall monitor any duties relating to the investments of the other Party's investors.

Article 4. National and Most-favoured-nation Treatment

1. Each Party shall accord in its territory, to the investments or income of investors of the other Party, a treatment no less favorable than that which it has given to the investments or income of local investors or than that which it provided to the investments and income of the investors of a third party, whichever is more favorable to the investor in question.

2. This treatment shall not extend to privileges which either Party may grant to investors of a third Party by reason of their membership of or inclusion in any free trade area, customs union, common market or any other agreement similar international agreements, existing or to be created in the future, to which any of the Parties is or may become a party."

3. Each Party, in accordance with the laws and regulations of its country, shall give to the investments or income of the investors of the other Party a treatment no less favorable than that which it has given to the investments or income of the investors of own.

4. The treatment provided in this article shall not be considered as an obligation for a Party to extend to the investors of the other Party the benefits 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 national law relating wholly or mainly to taxation.

Article 5. Expropriation

1. Investments or income of investors of each of the Parties in the territory of the other Party shall not be expropriated, used or subject to any other measure having an effect equivalent to that of expropriation or use (hereinafter referred to as "expropriation"), except when required in the public interest, supported by law, on a non-discriminatory basis and against prompt, appropriate payment and effective compensation.

2. The affected investor enjoys the right, according to the law and rules of the Party that makes the use, for an immediate review by the judicial or competent and independent authorities of this Party, of his case and to determine whether this expropriation and assessment of its investment is in accordance with the principles established in this article.

3. This compensation will be calculated with the market value of the investment used, at the moment before the expropriation measure is carried out or before this use becomes publicly known. The consideration shall bear interest at

LIBOR for one year to the date of payment, shall be payable without delay, in a freely convertible currency, and shall be effectively realizable and freely transferable.

Article 6. Compensation for Losses

1. Investors of a Party whose investments or income suffer loss in the territory of the other Party due to armed conflict, revolution, state of emergency, insurrection, civil war or similar events, shall be granted by the Party the latter with respect to restitution, indemnification, compensation or any other valid remedy, treatment no less favorable than that Party accords to domestic or third party investors, whichever is more favorable to the investor. The resulting payments will be freely transferable.

2. Notwithstanding paragraph 1 of this article, an investor of a Party who, in any of the situations referred to in this paragraph, suffers losses in the territory of the other Party, resulting from:

a) expropriation of the investment or part of it, or the authorities of the latter;

b) the destruction of the investment or part of it by the authorities of the latter, which was not necessary for the situation,

indemnity or compensation will be given by the last Party.

3. Compensation in any case will be immediate, appropriate and effective. The resulting payments will be made without delay in freely convertible and freely transferable currency.

Article 7. Transfers

1. Each Party shall guarantee to the investors of the other Party, in accordance with the laws and regulations of the host Party, the free transfer of all payments for fiscal obligations related to their investments. These transfers will include in particular, but not exclusively:

a) the initial capital and any additional capital for the maintenance or increase of an investment;

b) investment income;

c) funds for repayment of loans related to an investment;

d) the compensations that are given on the basis of article 5 and 6 and the payments that are made for the resolution of a dispute, according to articles 10 and 11 of this Agreement;

e) income from the sale or full or partial liquidation of an investment;

f) income and other remuneration of personnel engaged from abroad in connection with an investment.

2. Transfers under this Agreement shall be effected without delay and in a freely transferable currency at the exchange rate prevailing on the date of the transfer."

3. The parties will give the transfers referred to in this article a treatment no less favorable than that given to the transfer of payments derived from investments made by investors of any third party.

Article 8. Most Favorable Conditions

If the legislation of any of the Parties or the obligations arising under international law existing or later established between the Parties in addition to this Agreement, contain a provision, whether general or special, which gives investors of the other Party a more favorable treatment more favorable than that provided by this Agreement, this arrangement shall prevail to the extent that it is more favorable than this Agreement.

Article 9. Full Replacement (Subrogation)

1. If a Party or the agency designated by it makes a payment for an indemnity, guarantee or insurance contract against a non-commercial risk in connection with an investment made by any of its investors in the territory of the other Party, the latter Party shall recognize the transfer of any right or obligation of this investor to the former Party or the agency determined by it, to exercise on the basis of replacement with full rights, any right to the same extent as his predecessor.

2. This subrogation will make it possible for the former Party or the agency designated by it to be the direct beneficiary of

any payment for damages or other compensation that the investor may be charged to make.

3. Subrogation of rights and obligations for the indemnified investor will be applied, also for the transfer of effective payments in accordance with Article 7 of this Agreement.

Article 10. Settlement of Disputes between the Parties

1. Any dispute between the Parties regarding the interpretation or implementation of this Agreement shall, as far as possible, be resolved through diplomatic channels.

2. If the dispute cannot be resolved in this way within six (6) months from the beginning of the negotiations, it will be submitted to an arbitral tribunal at the request of one of the two Parties.

3. The arbitral tribunal will be established in the following manner: each Party will appoint one judge and these two judges will choose a third, who will be the chairman. If within 30 days of the request for arbitration the other Party has not appointed an arbitrator, or within 60 days of the appointment of two arbitrators, the third arbitrator has not been appointed, the other Party may invite the President of the International Court of Justice to appoint a judge.

4. The tribunal will issue its decisions on the basis of respecting the laws applied in the territories of the Party, the provisions contained in this Agreement, as well as the universal principles of international law.

5. The arbitral tribunal determines the procedures itself.

6. The arbitral tribunal will make decisions by majority vote. The arbitral decision must state the reasons on the basis of which the decision was made, and this decision will be final and binding on both Parties.

7. Each Party shall bear the expenses for the judge chosen by it and those of representation in the arbitration proceedings. Other expenses, including those of the president, will be borne in equal parts by both Parties.

Article 11. Disputes between a Party and an Investor of the other Party

1. Disputes that may arise between one Party and an investor of the other Party regarding an investment shall be submitted in writing, including detailed information, by the investor to the Party hosting the investment. As far as possible, the interested parties will try to resolve this dispute amicably.

2. In the event that these disputes cannot be resolved amicably within six months from the date when the written notice referred to in paragraph 1 is submitted for resolution, the dispute will be subject, at the option of the investor:

- the competent court of the Party in whose territory the investment was made or

- an ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);

- The International Center for the Settlement of Investment Disputes (ICSID), created by the Convention for the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington D.C., on March 18, 1965, in the event that both Parties are members of this Convention.

3. Arbitration will be based on:

- the provisions of this Agreement;

- universal rules and principles of international law;

- the laws that apply in the territory of the Party, in whose territory the investment is made, including the rules related to conflicts in law.

4. The provisions of Article 9 of this Agreement, a Party shall not use for protection, indemnification or compensation for all or part of the damage suffered, received or will be received by the investor on the basis of a contract guarantee or security.

5. The decisions of the arbitrator shall be final and binding on the Parties in dispute. Each Party undertakes to implement the decisions in accordance with the legislation of its country.

Article 12. Effectiveness, Duration and Termination

1. This Agreement shall enter into force on the date on which the Parties shall notify each other that the internal legal formalities required for the entry into force of an agreement have been completed. It shall apply from the date of its entry into force and shall remain in force for an initial period of 5 years and may be automatically renewed, unless objected by either Party, for a further period of 5 years.

2. Each Party may terminate this Agreement, by notifying the other Party in writing of the termination of this Agreement, at least 6 months before the date of its termination.

3. For investments made prior to the date of termination of this Agreement, this Agreement shall remain in effect for a further period during which they were effective prior to the termination of this Agreement.

Done in Tirana, on February 19, 2004 in two originals in the Albanian and English languages, all texts being of equal force.

In the event of a dispute in the interpretation of the provisions of this Agreement, the English language text will be taken as the basis.

FOR TEMPORARY SELF-GOVERNING INSTITUTIONS IN KOSOVO

Ali Yakupi

MINISTER OF TRADE

FOR THE COUNCIL OF MINISTERS OF THE REPUBLIC OF ALBANIA

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MINISTER OF ECONOMY

FOR THE UNITED NATIONS MISSION FOR THE PROVISIONAL ADMINISTRATION OF KOSOVO

ON BEHALF OF THE TEMPORARY SELF-GOVERNING INSTITUTIONS IN KOSOVO

Harri Holkeri

SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL