Agreement between the Swiss Confederation and the Republic of Kosovo on the Promotion and Reciprocal Protection of Investments

The Swiss Federal Council and the Government of the Republic of Kosovo,

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 and sustainable development of both States,

Convinced that these objectives can be achieved without relaxing health, safety, labour and environmental standards of general application,

Aiming to encourage investors to respect internationally recognized corporate social responsibility standards and principles,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement: (1) The term "investment" means every kind of asset established or acquired by an investor of one Contracting Party in the territory of the other Contracting Party that has such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk, including:

(a) Movable and immovable property, as well as any related rights, such as servitudes, mortgages, liens and pledges;

(b) A company, or shares, parts or any other kind of participation in a company;

(c) Claims to money or to any performance having an economic value, except claims to money arising solely out of commercial contracts for the sale of goods and services;

(d) Copyrights, industrial property rights (such as patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), know-how and goodwill;

(e) Rights conferred pursuant to law, contract or decision of an authority such as concessions, licences, authorizations and permits.

A change in the form in which assets are invested or reinvested does not affect their character as investments.

(2) The term "investor" refers with regard to both Contracting Parties to:

(a) A natural person who, according to the law of that Contracting Party, is considered to be its national. This shall not include a natural person that holds the nationality of both Contracting Parties unless such person has at the time of the investment and ever since been domiciled outside the territory of the Contracting Party in which the investment was established or acquired.

(b) A legal entity, including companies, corporations, business associations and other organisations, which are constituted or otherwise duly organised under the law of that Contracting Party and have their seat, together with real economic activities, in the territory of the same Contracting Party.

(c) A legal entity not established under the law of that Contracting Party but owned or effectively controlled by a natural person as defined in (a) above or by a legal entity as defined in (b) above.

(3) The term "returns" means the amounts yielded by an investment, and includes in particular, profits, interest, capital gains, dividends, royalties or other fees and payments, including payments in kind.

(4) The term "territory" means the territory of a Contracting Party over which it has jurisdiction or sovereign rights in accordance with international law.

Article 2. Scope of Application

The present Agreement applies to investments in the territory of one Contracting Party established or acquired in accordance with its laws and regulations by investors of the other Contracting Party, whether prior to or after the entry into force of this Agreement. It does however not apply to claims or disputes arising out of events which occurred prior to its entry into force.

Article 3. Promotion, Admission

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

(2) When a Contracting Party has admitted an investment on its territory, it shall provide, in accordance with its laws and regulations, all necessary permits or authorisations in connection with such investment including authorisations required for the activities of managerial and technical personnel of the investor's choice.

(3) Each Contracting Party shall without delay publish or otherwise make publicly available its laws, regulations as well as international agreements, that may affect the investments of investors of the other Contracting Party.

Article 4. Protection, Treatment

(1) Each Contracting Party shall in its territory accord to investments and returns of investors of the other Contracting Party at all times fair and equitable treatment as well as full protection and security. Neither Contracting Party shall impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension or disposal of such investments.

(2) Each Contracting Party shall in its territory accord to investments and returns of investors of the other Contracting Party treatment 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 to the investor concerned.

(3) Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment not less favourable than that which it accords to its own investors or investors of any third State, whichever is more favourable to the investor concerned.

(4) Treatment as referred to in paragraphs 2 and 3 shall not include special advantages accorded by a Contracting Party to investors of any third State by virtue of an existing or future agreement establishing a free trade area, a customs union or a common market or by virtue of an existing or future agreement on the avoidance of double taxation.

(5) It is understood that the most favoured nation treatment as referred to in paragraphs 2 and 3 does not apply to mechanisms for the settlement of investment disputes provided for in other international investment agreements concluded by the Contracting Party concerned.

Article 5. Expropriation, Compensation

(1) Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalization or any other measures having the same nature or the same effect against investments of investors of the other Contracting Party (hereinafter referred to as "expropriation"), 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 be equivalent to the fair market value of the investment immediately before the expropriation occurred or became public knowledge, whichever is earlier, as determined in accordance with recognised principles of valuation. The amount of compensation shall include interest at a normal commercial rate from the date of dispossession until the date of payment, shall be paid without delay, be fully realisable in a freely convertible currency and be freely transferable.

(2) Without prejudice to Article 11 (Disputes between a Contracting Party and an investor of the other Contracting Party), due process of law includes the right of an investor of a Contracting Party which claims to be affected by expropriation by the other Contracting Party to prompt review of its case, including the valuation of its investment and the payment of compensation in accordance with the provisions of this Article, by a judicial authority or another competent and

independent authority of the latter Contracting Party.

Article 6. Protection from Strife

(1) An investor of a Contracting Party who has suffered losses relating to its investment in the territory of the other Contracting Party due to war or to other armed conflict, state of emergency, revolution, insurrection, civil disturbance, or any other similar event in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or any other settlement, treatment not less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable to the investor.

(2) Notwithstanding paragraph 1, each Contracting Party shall accord to an investor of the other Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in its territory resulting from:

(a) Requisitioning of the investment or part thereof by its forces or authorities, or

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

Restitution or compensation which in both cases shall be prompt, adequate and effective and, with respect to compensation, shall be in accordance with Article 5 of this Agreement.

Article 7. Free Transfer

(1) Each Contracting Party shall ensure that all payments relating to investments in its territory of investors of the other Contracting Party may be transferred in and out of its territory without restriction or delay in a freely convertible currency. Such transfers shall include:

(a) The initial capital and additional amounts to maintain or increase the investment;

(b) Returns;

(c) Amounts relating to loans incurred, or other contractual obligations undertaken, for the investment;

(d) Amounts assigned to cover expenses relating to the management of the investment;

(e) Royalties and other payments deriving from rights enumerated in Article 1, paragraph (1), letters (c), (d) and (e) of this Agreement;

(f) Earnings and other remuneration of personnel engaged from abroad in connection with the investment;

(g) The proceeds of the partial or total sale or liquidation of the investment, including possible increment values;

(h) Payments arising out of the settlement of a dispute.

(2) Unless otherwise agreed with the investor, each Contracting Party shall ensure that the investor can make such transfers at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force of the Contracting Party in whose territory the investment was made.

Article 8. Subrogation

If an investor of a Contracting Party receives payment pursuant to an insurance contract against non-commercial risks, from an insurer admitted under the law of that Contracting Party, the other Contracting Party shall recognise the assignment of any right or claim of the investor to the insurer, and the right of the insurer to exercise such right or claim by virtue of subrogation to the same extent as its predecessor in title.

Article 9. More Favourable Conditions

If provisions in the legislation of a Contracting Party and the judicial or administrative practice thereto, specific commitments entered into with regard to an investment, or international obligations between the Contracting Parties contain a rule, whether general or specific, entitling investments by investors of the other Contracting Party to treatment more favourable than it is provided for by this Agreement, such rule shall to the extent that it is more favourable prevail over this Agreement.

Article 10. Other Commitments

Each Contracting Party shall observe any written commitment, including commitments of its sub-federal entities, local authorities and other entities acting in the exercise of public authority, specifically entered into with regard to an investment of an investor of the other Contracting Party, which the investor could rely on in good faith when making or modifying the investment.

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

(1) Without prejudice to Article 12 (Disputes between the Contracting Parties), disputes between an investor of a Contracting Party and the other Contracting Party regarding an investment of the former made in the territory of the latter, which are based on an alleged breach of obligations under this Agreement, shall be, to the extent possible, settled amicably through consultations by request in writing of either of the parties to the dispute ("disputing parties").

(2) If these consultations do not result in a solution within six months from the date of the written request for consultations, the investor may submit the dispute either to the courts or the administrative tribunals of the Contracting Party concerned or to international arbitration. In the latter event the investor has the choice between any of the following:

(a) The International Centre for Settlement of Investment Disputes ("ICSID") provided for by the Convention on the Settlement of Investment Disputes between States and Nationals of other States ("ICSID Convention"), opened for signature at Washington on March 18, 1965;

(b) The Additional Facility Rules of ICSID, if one of the Contracting Parties is not a member of the ICSID Convention but not both; or

(c) An ad hoc arbitral tribunal which, unless otherwise agreed upon by the disputing parties, shall be established under the arbitration rules of the United Nations Commission on International Trade Law ("UNCITRAL").

(3) Each Contracting Party hereby gives its irrevocable and unconditional consent to the submission of an investment dispute to international arbitration in accordance with paragraph 2.

(4) Once the investor has referred the investment dispute to international arbitration as provided for in paragraph 2, the choice of the jurisdiction shall be final.

(5) No Contracting Party shall have the right to exercise diplomatic protection or to bring an international claim with respect to an investment dispute submitted to international arbitration by its investor in accordance with paragraph 2, unless the other Contracting Party does not comply with the arbitral award.

(6) Arbitration proceedings pursuant to this Article shall take place at the request of a disputing party in a country that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, on June 10, 1958.

(7) The Contracting Party concerned shall at no time whatsoever during the process assert as a defence its immunity or the fact that the investor has received, by virtue of an insurance, a compensation covering the whole or part of the incurred loss or damage.

(8) An arbitral tribunal established pursuant to paragraph 2 shall decide the issues in dispute in accordance with this Agreement and other applicable rules of international law.

(9) The award shall be binding and shall not be subject to any appeal or remedy other than those provided for in the ICSID Convention or arbitral rules on which the arbitral proceedings chosen by the investor are based. The award shall be enforced without delay by the Contracting Parties as a final and absolute ruling under domestic law.

Article 12. Disputes between the Contracting Parties

(1) Any dispute between the Contracting Parties regarding the interpretation or application of this Agreement shall, to the extent possible, be resolved through direct consultations. Should the Contracting Parties agree on the controversial issue, a written agreement may be concluded regarding the interpretation or application of a provision of this Agreement, which shall be binding on any arbitral tribunal constituted under this Agreement.

(2) If the Contracting Parties cannot reach an agreement within six months after the request for consultations, the dispute

shall, upon request of either Party, be submitted to arbitration.

(3) Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall appoint a chairman who shall be a national of a third State. 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 since the request for arbitration, the arbitrator shall be appointed upon the request of that Contracting Party by the Secretary General of ICSID. If both arbitrators cannot agree on the choice of the chairman within two months of their appointment, the latter shall be appointed upon request of either Contracting Party by the Secretary General of ICSID.

(4) If the Secretary General of ICSID is prevented from carrying out the said function or is a national of one of the Contracting Parties, the President of the International Court of Justice acts as appointing authority. If the President of the International Court of Justice is prevented from carrying out the said function or is a national of one of the Contracting Parties, the appointments shall be made by the Vice-President, and if the latter is prevented or is a national of one of the Contracting Parties, the appointments shall be made by the next senior member of the Court who is not a national of a Contracting Party.

(5) Subject to other provisions made by the Contracting Parties, the tribunal shall determine its own procedure. The tribunal shall decide the issues in dispute in accordance with this Agreement and other applicable rules of international law. The award of the tribunal is final and binding for each Contracting Party.

(6) Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings. The cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties, unless the arbitral tribunal decides otherwise.

Article 13. Consultations

Each Contracting Party may propose to the other Contracting Party consultations on any matter other than a dispute relating to this Agreement. These consultations shall be held at a place and time agreed upon through diplomatic channels.

Article 14. Final Provisions

(1) This Agreement shall enter into force on the day of receipt of the second notification, confirming that both Contracting Parties have complied with the legal requirements for the entry into force of international agreements.

(2) This Agreement shall remain binding for a period of ten years. Unless written notice of termination is given six months before the expiration of this period, the Agreement shall be considered as renewed on the same terms for a period of two years, and so forth.

(3) In case of termination of the present Agreement by written notice, the provisions of Articles 1 to 12 shall continue to be effective for a further period of ten years, unless any longer term has been specifically agreed, for investments made before the effective date of termination.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate, at Pristina, on 27th October 2011, in the French, Albanian, Serbian and English languages, each text being equally authentic. In case of divergences the English text shall prevail.

For the Swiss Federal Council

For the Government of the Republic of Kosovo