AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CROATIA AND THE GOVERNMENT OF THE KINGDOM OF THAILAND ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Croatia and the Government of the Kingdom of Thailand (hereinafter the "Contracting Parties");

Desiring to promote greater economic cooperation between them, with respect to investment by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that agreement upon the treatment to be accorded to such investment will stimulate the flow of private capital and the economic development of the Contracting Parties;

Agreeing that a stable framework for investment will maximize effective utilization of economic resources and increase prosperity;

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

Have agreed as follows:

Article 1. Definitions

For the purposes of the Agreement:

1. The term "investment" means every kind of asset established or acquired by investors of one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations and shall include in particular, though not exclusively:

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

b) Stock, shares, debentures and other forms of participation in companies;

c) Claims to money or to any performance having economic value, including every loan granted for the purpose of creating economic value;

d) Intellectual property rights including, but not limited to, copyrights and neighbouring rights, industrial property rights, trademarks, patents, industrial designs and technical processes, rights in plants varieties, know-how, trade secrets, trade names and goodwill;

e) Rights to engage in economic and commercial activities conferred by law and by virtue of a contract, including concessions to search for, cultivate, extract or exploit natural resources.

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

2. The term "investor" means in respect of either Contracting Party:

a) A natural person, a national of a Contracting Party who makes an investment in the territory of the other Contracting Party;

b) A legal person incorporated, constituted or otherwise duly organised in accordance with the laws and regulations of one Contracting Party, having its seat and performing real business activity in the territory of the same Contracting Party and making an investment in the territory of the other Contracting Party;

3. The term "returns" means income deriving from an investment and includes, in particular though not exclusively, profits,

dividends, interests, capital gains, royalties, patents licence fees, and other fees.

4. The term "without delay" shall mean such period as is normally required for the completion of necessary formalities for the transfer of payments.

5. The term "freely usable currencies" shall mean currencies that the International Monetary Fund determines, from time to time, that (I) is, in fact, widely used to make payments for international transactions, and (ii) is widely traded in the principle exchange markets.

6. 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 Thailand: the national territory of the Kingdom of Thailand including the maritime areas, seabed and subsoil, over which the Kingdom of Thailand exercises sovereign rights and jurisdiction in accordance with international law.

Article 2. Promotion and Admission of Investments

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

2. In order to encourage mutual investment flows, each Contracting Party shall endeavour to inform the other Contracting Party, at the request of either Contracting Party, on the investment opportunities in its territory.

3. Each Contracting Party shall grant, whenever necessary, in accordance with its laws and regulations, permits in connection with the investments in its territory, including authorisations for engaging top managerial and technical personnel of their choice, regardless of nationality.

4. Each Contracting Party shall permit, subject to its laws, regulations and procedures affecting the entry, stay and work of natural persons, regardless of nationality, key personnel including top managerial and technical persons who are employed for the purposes of investments by an investor of the other Contracting Party, to enter, stay and work in its territory. Immediate family members (spouse and minor children) of such key personnel shall also be granted similar treatment with regard to the entry and temporary stay in the host Contracting Party.

Article 3. Protection of Investments

1. Each Contracting Party shall extend in its territory full protection and security to investments and returns of investors of the other Contracting Party. Neither Contracting Party shall hamper, by arbitrary, unreasonably or discriminatory measures, the development, management, maintenance, use, enjoyment, expansion, sale and if it is the case, the liquidation of such investments. Either Contracting Party shall observe any other obligation it may have entered into with regard to specific investments of investors of the other Contracting Party.

2. Investments or returns of investors of either Contracting Party in the territory of the other Contracting Party shall ‘be accorded fair and equitable treatment in accordance with international law and provisions of this Agreement.

3. Each Contracting Party shall in its territory not impose mandatory measures on investments by investors of the other Contracting Party concerning purchase of materials, means of production, operation, transport, marketing of its products or similar orders having unreasonable or discriminatory effects.

4. Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, procedures and administrative rulings and judicial decisions of general application as well as international agreements which may affect the investments of investors of one Contracting Party in the territory of the other Contracting Party.

Article 4. National Treatment and Most Favoured Nation Treatment

1. Neither Contracting Party shall accord in its territory to investments and returns of investors of the other Contracting Party a treatment less favourable than that which it accords to investments and returns of its own investors, or investments and returns of investors of any other third State, whichever is more favourable to the investors concerned.

2. Neither Contracting Party shall accord in its territory to the investors of the other Contracting Party, as regards

management, maintenance, enjoyment, use or disposal of their investment, a treatment which is less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable to the investors concerned.

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

b) Any international agreement or arrangement, completely or partially related to taxation, to which either of the Contracting Party is or may become a Party in the future.

Article 5. Expropriation

1. A Contracting Party shall not expropriate or nationalise directly or indirectly an investment in its territory of an investor of another Contracting Party or take any measure or measures having equivalent effect (hereinafter referred to as "expropriation") except:

a) For a purpose which is in the public interest,

b) On a non-discriminatory basis,

c) In accordance with due process of law, and

d) Accompanied by payment of prompt, adequate and effective compensation.

2. Compensation shall be paid without delay.

3. Such compensation shall amount to the fair market value of the expropriated investment at the time immediately before the expropriation was taken or became publicly known, whichever is earlier.

4. The payment of such compensation shall be freely transferable in a freely usable currency on the basis of the market rate of exchange existing for that currency at the moment referred to in paragraph 2 of this Article. Compensation shall also include interest at a commercial rate established on a market basis for the currency in question from the date when the payment is due until the date of actual payment.

5. The investor, whose investments are expropriated, shall have the right to prompt review of its case by a judicial or other competent authority of that Contracting Party, valuation of its investments and payment of compensation in accordance with the principles set out in this Article.

Article 6. Compensation for Damage or Loss

1. When investments made by investors of either Contracting Party suffer loss or damage owing to war or other armed conflict which is not a result of the activities of the Contracting Party to which the investors belong, civil disturbances, revolution, riot or similar events in the territory of the latter Contracting Party, they shall be accorded by the latter Contracting Party, treatment, as regards restitution, indemnification, compensation or any other settlement, not less favourable than that that the latter Contracting Party accords to its own investors or to investors of any third State, whichever is most favourable to the investors concerned.

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 damage or loss in the territory of the other Contracting Party resulting from:

a) Requisitioning of their property or part thereof by its forces or authorities;

b) Destruction of their property or part thereof 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 a prompt restitution, and where applicable prompt, adequate and effective compensation for damage or loss sustained during the period of requisitioning or as a result of destruction of their property. Resulting payments shall be freely transferable in freely usable currency without delay.

3. Investor whose investments suffer damage or loss in accordance to paragraph 2. of this Article, shall have the right to prompt review of its case by a judicial or other competent authority of that Contracting Party and of valuation of its

investments and payment of compensation in accordance with the principles set out in paragraph 2. of this Article.

Article 7. Transfers

1. Each Contracting Party shall ensure that all payments relating to an investment in its territory of an investor of the other Contracting Party may be freely transferred into and out of its territory without delay. Such transfers shall include, in particular, though not exclusively:

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

b) Returns;

c) The amounts required for payment of expenses which arise from the operation of the investment under contract, loan repayments, payment of royalties, management fees, licence fees or other similar expenses;

d) Proceeds from the sale or liquidation of all or any part of an investment;

e) Payments of compensation under Article 5 and 6 of this Agreement;

f) Payments arising out of the settlement of an investment dispute;

g) Earnings and other remuneration of personnel engaged from abroad in connection with an investment.

2. The nationals of each Contracting Party who have been authorised to work in the territory of the other Contracting Party in connection with an investment shall also be permitted to transfer an appropriate portion of their earnings to their country of origin.

3. Transfers shall be made in a freely usable currency at the rate applicable on the day transfers are made in the currency used.

Article 8. Subrogation

If a Contracting Party or its designated agency makes a payment under an indemnity, guarantee or contract of insurance against non-commercial risks given in respect of an investment of an investor in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment of any right or claim of such investor to the former Contracting Party or its designated agency and the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right and claim to the same extent as its predecessor in title.

Article 9. Application of other Legal Provisions

Without prejudice to Article 4, paragraph 3 of this Agreement, if the provisions of law of either Contracting Party or international obligations existing at present or established thereafter between the Contracting Parties in addition to the present Agreement, contain a rule, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rule shall, to the extent that it is more favourable, prevail over the present Agreement.

Article 10. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any investment dispute between a Contracting Party and an investor of the other Contracting Party shall be settled amicably by consultations and negotiations.

2. If a dispute under paragraph 1 of this Article cannot be settled within six (6) months of a written notification, the dispute shall be upon the request of the investor settled as follows:

a) By a competent court of the Contracting Party, or;

b) By conciliation or arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington on March 18th, 1965 in case both Contracting Parties have become the parties to the Convention, or;

c) By arbitration by three arbitrators in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), as amended by the last amendment accepted by both Contracting Parties at the time

of the request for initiation of the arbitration procedure.

3. The award shall be final and binding; it shall be executed according to the national law; each Contracting Party shall ensure the recognition and enforcement of the arbitral award in accordance with its relevant laws and other regulations.

4. A Contracting Party which is a party to a dispute shall not, at any stage of conciliation or arbitration proceedings or enforcement of an award, raise the objection that the investor who is the other party to the dispute has received an indemnity by virtue of a guarantee in respect of all or a part of its losses.

Article 11. 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.

3. Such arbitral tribunal shall be constituted ad hoc 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. 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, the chairman of which shall be appointed within two (2) further months.

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.

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

6. The arbitral tribunal shall reach its decision in virtue of the present Agreement and pursuant to the 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 12. Application of the Agreement

1. This Agreement shall apply to investments made prior to or after the entry into force of this Agreement, but shall not apply to any investment dispute that may have arisen before its entry into force.

2. The benefits of this Agreement shall apply only in cases where the investment of capital by the nationals and companies of one Contracting Party in the territory of the other Contracting Party has been specifically approved, if necessary, in writing by the competent authority of the latter Contracting Party.

Article 13. 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 14. Duration and Denunciation

This Agreement shall remain in force for a period of ten (10) years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of denunciation to the other through the diplomatic channels. Provided that in respect of investments made whilst the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of ten (10) years after the date of denunciation and without prejudice to the application thereafter of the rules of general international law.

IN WITNESS WHEREOF, the undersigned representatives, duly authorised thereto, have signed the present Agreement.

DONE at Bangkok, on 18 February 2000, in two originals, each in the Croatian, Thai 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 REPUBLIC OF CROATIA

FOR THE GOVERNMENT OF THE KINGDOM OF THAILAND