AGREEMENT BETWEEN THE REPUBLIC OF SERBIA AND THE PORTUGUESE REPUBLIC ON THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS

The Portuguese Republic and the Republic of Serbia, hereinafter referred to as the "Parties";

Desiring to intensify the economic co-operation between the two States;

Intending to encourage and create favourable conditions for investments made by investors of one Party in the territory of the other Party on the basis of equality and mutual benefit;

Recognising that the mutual promotion and protection of investments on the basis of this Agreement will stimulate economic sustainable development;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1. The term "investments" means every kind of assets, invested by investors of one of the Parties in the territory of the other Party, in accordance with the laws and regulations of the latter, and in particular, though not exclusively, includes:

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

b) Shares, stocks, debentures, or other forms of interest in the equity of companies and/or economic interests from the respective activity;

c) Claims to money or to any other rights having an economic value, but does not include claims to money arising from commercial contracts resulting from the sale of goods or services, or credits granted in relation with this commercial contracts;

d) Intellectual property rights such as copyrights, patents, utility models, industrial designs, trade marks, trade names, trade and business secretes, technical processes, know -how and good will;

e) Concessions conferred by law under a contract or an administrative act of a competent state authority, including concessions for prospecting, research, exploitation and extracting of natural resources.

2. Any alteration of the form in which assets are invested does not affect their character as investments, provided that such a change does not contradict the laws and regulations of the Party in which territory the investment was made.

3. The term "investors" means any person from one Party that invests in the territory of the other Party, in accordance with its law:

a) Natural persons having the nationality of either Party; and

b) Legal persons, including corporations, commercial companies or other companies or associations, which seat is in the territory of either Party and are incorporated or constituted in accordance with the law of that Party.

4. The term "returns" means the amount yielded by investments, over a given period, in particular, though not exclusively, includes profits, dividends, interests, royalties, technical assistance fees or other forms of income related to the investments.

5. In cases where the returns of investments, as defined above, are reinvested, the income resulting from the reinvestment are also considered as income related to the first investments.

6. The returns of investments are subject to the same protection given to the investments.

7. The term "territory" means:

a) Concerning the Republic of Serbia: the area over which the Republic of Serbia exercises, in accordance with its national laws and regulations and international law, sovereign rights or jurisdiction

b) Concerning the Portuguese Republic: the territory in which the Portuguese Republic has, in accordance with international law and its national laws, sovereign rights or jurisdiction, including land territory, territorial sea and air space above them, as well as those maritime areas adjacent to the outer limit of the territorial sea, including seabed and subsoil thereof.

Article 2. Scope

This Agreement applies to all investments made by investors from one of the Parties in the territory of the other Party, prior to as well as after its entry into force, in accordance with the respective legal provisions, but does not apply to any dispute resulting from facts occurred before its entry into force.

Article 3. Promotion and Protection of Investments

1. Each Party shall encourage and create favourable conditions, within its territory, for investments made by investors of the other Party and shall admit such investments into its territory in accordance with its laws and regulations.

2. Investments of investors of either Party made in accordance with the respective laws and regulations shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Party.

3. Neither Party shall in any way impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Party.

Article 4. National and Most Favoured Nation Treatment

1. Investments made by investors of one Party in the territory of the other shall be accorded treatment that is not less favourable than the latter Party accords to the investments of its own investors or investments of investors of any third State, whichever is more favourable.

2. Investors of one Party shall be accorded by the other Party, as regards the management, maintenance, use, enjoyment or disposal or their investments, treatment that is not less favourable that the latter Party accords to its own investors or to investors of any third State.

3. The most favoured nation treatment also applies to the settlement of disputes.

4. The provisions of this article shall not be construed so as to oblige one Party to extend to the investors of the other Party the benefit of any treatment, preference or privilege which may be extended by the former Party by virtue of:

a) Existing or future free trade area, customs unions, common markets or other similar international agreements including other forms of regional economic co-operation to which either of the Parties is or may become a Party; and

b) Bilateral and multilateral agreements having or not regional nature, relating wholly or mainly to taxation.

5. The Parties agree that the provisions of this article shall be without prejudice to the right of either Party to apply the relevant provisions of their tax law which distinguishes between tax -payers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested.

Article 5. Application of other Rules

1. If the provisions of law of either Party or obligations under international law existing at present or established hereafter between the Parties in addition to this Agreement contain rules, whether general or specific, entitling investments made by investors of the other Party to a treatment more favourable than is provided for by this Agreement, such rules shall, to the extent that they are more favourable, prevail over this Agreement.

2. Each Party shall fulfil any emerging obligations, beyond the ones prescribed in the present Agreement, regarding investments made by investors of the other Party in its territory.

Article 6. Expropriation

1. Investments made by investors of either Party in the territory of the other Party shall not be expropriated, nationalised or subjected to any other measure with effects equivalent to expropriation or nationalisation (hereinafter referred to as expropriation) except by virtue of law, for a public purpose, on a non-discriminatory basis and against prompt compensation.

2. Such compensation shall amount to the market value of the expropriated investments immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier.

3. The compensation shall be paid without delay, shall include the usual commercial interest from the date of the expropriation until the date of payment and shall be prompt, effective, adequate and freely transferable in convertible currency, according to the exchange rate applicable on the date of the transfer in the territory of the Party in which the investment was made.

4. Investors whose investments are expropriated shall have the right under the law of the expropriating Party to the prompt review, by a judicial or other competent authority of that Party, of their cases and of valuation of their investments in accordance with the principles set out in this article.

Article 7. Compensation for Losses

1. Investors of one Party whose investments suffer losses in the territory of the other Party, owning to war or armed conflict, revolution, a state of national emergency or other events considered as such by international law, shall be accorded treatment no less favourable by the latter Party than that Party accords to the investments of its own investors, or of any third State, whichever is more favourable, as regards restitution, indemnification or other valuable settlement.

2. Without prejudice to paragraph 1 of this article, investors of one Party who in any of the situations referred to in that paragraph suffer losses in the territory of the other Party resulting from:

a) Requisitioning of their property by the authorities of the other Party; or

b) Destruction of their property by the authorities of the other Party, which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded fair and adequate compensation for the losses suffered during the requisition or resulting from the destruction of their properties.

3. The compensation foreseen in this article shall be, fair and adequate, paid without delay, and freely transferable in convertible currency, according to the exchange rate applicable on the date of the transfer in the territory of the Party in which the investment was made.

Article 8. Transfers

1. Each Party, in accordance with its laws and regulations, guarantees to investors of the other Party the free transfer of amounts related to their investments, upon deduction of any due fiscal or financial obligations, in particular, though not exclusively:

a) The capital and additional amounts necessary to maintain or increase the investments;

b) The returns defined in paragraph 3 of article 1 of this Agreement;

c) The funds in service, repayment and amortisation of loans, recognised by both Parties to be an investment;

d) The proceeds obtained from the sale or from the total or partial liquidation of the investment;

e) The compensation or other payments referred to in articles 6 and 7 of this Agreement;

f) Any payments that may be made in the name of the investor in accordance with article 9 of this Agreement;

g) Payments resulting from the settlement of a dispute, according to article 11 of this Agreement;

h) The wages earned by foreign workers dully authorised to work in connection with the investment in the territory of the other Party.

2. The transfers referred to in this article shall be made without delay, in convertible currency, at the exchange rate

applicable on the date of the transfer in the territory of the Party in which the investment was made.

3. For the purposes of the present article, a transfer will be considered as done "without delay" when such transfer takes place within the time normally used for the fulfilment of the necessary formalities, which should not in any circumstances exceed thirty (30) days from the date the requirement for transfer was presented.

Article 9. Subrogation

If either Party or its designated agency makes any payment to one of its investors as a result of a guarantee in respect of an investment made in the territory of the other Party, the former Party shall be subrogated to the rights and actions of this investor, and may exercise them according to the same terms and conditions as the original holder.

Article 10. Disputes between the Parties

1. Disputes between the Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled by negotiations through diplomatic channels.

2. If the Parties fail to reach such settlement within six (6) months after the beginning of negotiations, the dispute shall, upon the request of either Party, be submitted to an arbitral tribunal.

3. The Arbitral Tribunal referred to in paragraph 2 of this article shall be constituted ad hoc as follows:

a) Each Party shall appoint one member and these two members shall propose a national of a third State as chairman to be appointed by the two Parties;

b) The members shall be appointed within two (2) months and the chairman shall be appointed within three (3) months from the date on which either Party notifies the other in writing that it wishes to submit the dispute to an arbitral tribunal;

c) The chairman of the arbitral tribunal has to be a national of a State, with which each Party maintain diplomatic relations.

4. If the deadlines specified in paragraph 3 of this article are not complied with, either Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments.

5. If the President is prevented from doing so, or is a national of either Party, the appointments shall be made by the member of the Court who is next in seniority and who is not prevented from doing the appointments and not a national of either Party.

6. The Arbitral Tribunal shall define its own rules of procedure.

7. The Arbitral Tribunal shall decide on the basis of the provisions of this Agreement as well as of the generally accepted principles and rules of international law.

8. The Arbitral Tribunal shall decide by majority vote.

9. The decisions of the Tribunal shall be final and binding for both Parties.

10. Each Party shall be responsible for the costs of its own member and of its representatives at the arbitral proceedings. Both Parties shall assume an equal share of the expenses incurred by the chairman, as well as any other expenses.

11. The Tribunal may make a different decision regarding costs.

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

1. Any dispute which may arise between an investor of one Party and the other Party concerning an investment of that investor in the territory of the latter Party shall be settled amicably through negotiations.

2. If such dispute cannot be settled in accordance with paragraph 1 of this article within a period of six (6) months from the date of request for settlement, the investor may submit the dispute to:

a) The competent courts of the Party in which the investment was made; or

b) The International Centre for the Settlement of Investments Disputes (ICSID) through conciliation or arbitration, established under the Convention on the Settlement of Investments Disputes between States and Nationals of other States, opened for signature in Washington D.C., on March 18, 1965; or

c) An ad hoc arbitral tribunal established in accordance with the arbitral rules of the United Nations Commission on International Trade Law (UNCITRAL); or

d) Any other arbitration rules, provided that the State party to the dispute gives its consent.

3. The decision to submit the dispute to one of the above mentioned procedures is final.

4. Without prejudice to paragraph 3 of this article, if the investor chooses to solve the dispute in the national courts of the Party where the investment was made and if no decision has been awarded after a twenty four (24) month period, the investor may submit the dispute to international arbitration in accordance with paragraph 2 of this article, notifying the national court of this decision.

5. The award shall be final and enforceable for the parties and shall not be subject to any appeal or remedy other than those provided for in domestic laws or regulations. The award shall be enforceable in accordance with the domestic law of the Party in whose territory the investment was made.

6. Once the judicial or arbitral proceedings have terminated and a Party has failed to abide by or to comply with the award rendered in compliance with this article, both Parties may exceptionally use diplomatic channels in order to guaranty the enforcement of the said award.

Article 12. Consultations

Representatives of the Parties shall, whenever necessary, hold consultations on any matter relating to the interpretation and application of this Agreement. These consultations shall be held on the proposal of one of the Parties, which shall, if necessary, propose meetings at a place and a time to be agreed upon through diplomatic channels.

Article 13. Entry Into Force

The present Agreement shall enter into force on the thirtieth day following the receipt of the last written notification through diplomatic channels, stating that all the internal legal procedures for its entry into force have been fulfilled.

Article 14. Duration and Termination

1. The present Agreement shall remain in force for a period of ten (10) years.

2. Unless either Party notifies the other, in writing and through diplomatic channels, of its intention to terminate the present Agreement at least one year before the end of the initial ten years period, the present Agreement shall remain in force for indeterminate periods of five years.

3. After the initial period of ten years, either Party may terminate at any time the present Agreement by giving at least one year's written notice to the other Party. The notice shall be sent through diplomatic channels.

4. In respect of investments made prior to the date of termination of present Agreement, the provisions of articles 1 to 12 shall remain in force for a further period often years from the date of termination.

Done at Lisbon on this sixteenth day of 2009 in duplicate in the Serbian, Portuguese and English languages, all texts being authentic. In case of any divergence in the interpretation of this Agreement, the English text shall prevail.

For the Republic of Serbia

Ambassador Dusko Lopandic

Ambassador of the Republic of Serbia to the Portuguese Republic.

For the Portuguese Republic

Ambassador Maria Margarida Figueiredo

Director-General for Technical and Economic Affairs of the Ministry of Foreign Affairs