AGREEMENT ON THE PROMOTION AND PROTECTION OF INVESTMENTS BETWEEN SWEDEN AND BOSNIA AND HERZEGOVINA

Sweden and Bosnia and Herzegovina, hereinafter referred to as "the Contracting Parties",

Desiring to extend and intensify the economic co-operation between the two Contracting Parties on the basis of equality and mutual benefit;

Intending to create and maintain fair and equitable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognising that the promotion and reciprocal protection of such investments under this Agreement will stimulate business initiatives and the expansion of economic relations between Contracting Parties;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means every kind of asset owned or controlled directly or indirectly by an investor of one Contracting Party in the territory of the other Contracting Party provided that the investment has been made in accordance with the laws and regulations of the latter and shall include, in particular, though not exclusively:

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

b) A company or business enterprise, or shares, stocks and any other form of participation in a company or business enterprise;

c) Claims to money or to any performance having an economic value;

d) Intellectual property rights, technical processes, trade names, know-how, goodwill and other similar rights;

e) Business concessions conferred by law, administrative decisions or under contract, including concessions to search for, develop, cultivate, extract or exploit natural resources.

Goods, that under a leasing agreement are placed at the disposal of a lessee in the territory of one Contracting Party by a lessor being an investor of the other Contracting Party shall be treated not less favourably than an investment.

Any subsequent change in the form in which assets are invested or reinvested shall not affect their character as investments provided that such change is in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

2. The term "investor" means:

a) In respect of Sweden:

(i) Natural persons who are citizens of Sweden in accordance with its law; and

(ii) Legal persons or other organisations organised in accordance with the law applicable in Sweden; and

(iii) Legal persons not organised under the law of Sweden, but being controlled by an investor as defined under (i) or (ii).

b) In respect of Bosnia and Herzegovina:

(i) Natural persons deriving their status as Bosnia and Herzegovina citizens from the law in force in Bosnia and Herzegovina if they have permanent residence or main place of business in Bosnia and Herzegovina;

(ii) Legal persons established in accordance with the laws in force in Bosnia and Herzegovina, which have their registered seat, central management or main place of business in the territory of Bosnia and Herzegovina.

3. The term "returns" means an amount yielded by an investment and includes, in particular, though not exclusively, royalties or licence fees, profits, interest, dividends, capital gains, fees and other compensations.

4. The term "territory" means:

a) With respect to Sweden: the territory of Sweden as well as the exclusive economic zone, the seabed and subsoil, over which Sweden exercises, in accordance with international law, sovereign rights or jurisdiction.

b) With respect to Bosnia and Herzegovina: all land territory of Bosnia and Herzegovina, its territorial sea, seabed and subsoil and air space above, including any maritime area situated beyond the territorial sea of Bosnia and Herzegovina which has been or might in the future be designated under the law of Bosnia and Herzegovina in accordance with international law as an area within which Bosnia and Herzegovina may exercise rights with regard to the seabed and subsoil and the natural resources.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall, subject to its general policy in the field of foreign investment, encourage and create favourable, stable and transparent conditions for investors of the other Contracting Party to make investments in its territory and, shall admit such investments in accordance with its legislation.

2. Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall 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 expansion, management, maintenance, use, enjoyment or disposal of investments nor the acquisition of goods and services or the sale of their production, in its territory of investors of the other Contracting Party. In no case the Contracting Party shall award treatment less favourable than that required by international law. Each Contracting Party shall observe any obligation it has entered into with the investors of the other Contracting Party with regard to their investments.

3. Returns yielded from an investment shall be given the same treatment and protection as an investment.

4. Subject to the laws and regulations relating to the entry and sojourn of aliens, individuals working for an investor of one Contracting Party, as well as members of their household shall be permitted to enter into, remain on and leave the territory the other Contracting Party for the purpose of carrying out activities associated with investments in the territory of the latter Contracting Party.

Article 3. National Treatment and Most-favoured-nation Treatment

1. Each Contracting Party shall in its territory accord to investments and returns of investors of the other Contracting Party treatment which is no 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.

2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards the operation, management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable.

3. The provisions of paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

a) The membership of or association with any existing or future free trade area, customs union, economic union or common market to which the Contracting Party is or may become a party;

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

Article 4. Nationalisation and Expropriation

1. Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalised, expropriated or subjected to requisition or to measures having effect equivalent to nationalisation or

expropriation (hereinafter referred to as "expropriation") except for a public purpose related to the internal needs and under due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation.

2. Such compensation shall amount to the fair market value of the investments affected immediately before the expropriation or before the impending expropriation became publicly known in such a way as to effect the value of the investment (hereinafter referred to as the "Valuation Date"), whichever is the earlier. Such fair market value shall at the request of the investor be expressed in a freely convertible currency on the basis of the market rate of exchange existing for that currency on the Valuation Date. The compensation shall include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment. The compensation shall be paid in a freely convertible currency and made transferable without delay, to the country designated by the claimants concerned.

3. The affected investors of either Contracting Party shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, concerning the legality of the expropriation, its process and the valuation of the investment in accordance with the principles set out in paragraphs 1 and 2 of this Article.

4. The provisions of paragraphs 1 and 2 of this Article shall also apply to the returns from an investment as well as, in the event of liquidation, to the proceeds from the liquidation.

5. Where a Contracting Party expropriates the assets of a company or an enterprise in its territory in which investors of the other Contracting Party have an investment, including through the ownership of shares, it shall ensure that the provisions of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other Contracting Party.

Article 5. Compensation for Losses

1. Investors of either Contracting Party who suffer losses including damages in respect of their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot 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 is more favourable to the investors of the other Contracting Party.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in any of the situations referred to in that paragraph, suffer losses in the territory of the other 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 were not required by the necessity of the situation,

Shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective. Resulting payments shall be transferable without delay in a freely convertible currency.

Article 6. Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments relating to their investments in and out of its territory. Such transfers shall include in particular though not exclusively:

a) Initial capital and additional amounts necessary for the maintenance and development of the investment;

b) Returns;

c) Funds in repayment of loans being an investment;

d) Proceeds from the total or partial sale or liquidation of an investment;

e) Any compensation or other payment referred to in Articles 4 and 5 of this Agreement;

f) Payments arising out of the settlement of the disputes;

g) Earnings and other remuneration of individuals engaged from abroad in connection with the investment.

2. Transfers shall be effected without delay in a convertible currency at the market rate of exchange existing on the date of transfer with respect to spot transactions in the currency to be transferred. 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 the most favourable to the investor.

Article 7. Subrogation

If either Contracting Party or its designated agency makes a payment to any of its investors under a guarantee it has assumed in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 10, recognise the assignment, whether under a law or pursuant to a legal transaction, of any right or claim of such investor to the former Contracting Party or its agency. The latter Contracting Party shall also recognise the subrogation of the former Contracting Party or its agency to any such right or claim (assigned claims) which that Contracting Party or its agency shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments made by virtue of such assigned claims, Articles 4, 5 and 6 shall apply mutatis mutandis.

Article 8. Settlement of Disputes between an Investor and a 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 investors' choice, for resolution by international arbitration to one of the following fora:

a) 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, or

b) An ad hoc tribunal under the Additional Facility Rules of ICSID, if the Centre is not available under the Washington Convention, or

c) 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.

If the parties to such a dispute have a different opinions as to whether conciliation or arbitration is the more appropriate method of settlement, the investor shall have the right to chose.

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 legal person of the other Contracting Party.

4. Any arbitration under the Additional Facility Rules of ICSID or the UNCITRAL Arbitration Rules shall 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.

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), the Additional Facility Rules of ICSID, Article 1 of the UNCITRAL Arbitration Rules and Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

6. In any proceeding involving an investment dispute, a Contracting Party shall not assert, as a defence, counterclaim, right of set-off 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, but the Contracting Party may require evidence that the compensation party agrees to that the investor exercises the right to claim compensation.

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. Consultations and Exchange of Information

The Contracting Parties agree to consult promptly, on the request of either, on any matter relating to the interpretation or

application of this Agreement. These consultations may include the exchange of information on the impact that the laws, regulations, decisions, administrative practices or procedures or policies of the other Contracting Party may have on investments covered by this Agreement.

Article 10. Settlement of Disputes between Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled by consultations and negotiations through diplomatic channels.

2. If a dispute between the Contracting Parties cannot be settled in accordance with paragraph 1 of this Article within six months from the date of request for settlement, the dispute shall upon the request of either Contracting Party be submitted to an arbitral tribunal of three members.

3. Such arbitral tribunal shall be constituted for each individual case in the following way. Within two months from the date of receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not incapacitated or a national of either Contracting Party shall be invited to make the necessary appointments.

5. The tribunal shall determine its own procedure.

6. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties.

7. 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. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties.

8. A dispute shall not be submitted to an international arbitral tribunal under the provisions of this Article, if the same dispute has been brought before another international arbitration tribunal under the provisions of Article 8 and is still before the court. This will not impair the possibility of dispute settlement in accordance with paragraph 1 of this Article.

Article 11. Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, 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 rules shall to the extent that they are more favourable prevail over the present Agreement as long as they last.

Article 12. Application of the Agreement

The provisions of this Agreement shall apply to investments made after its entry into force by investors of one Contracting Party in the territory of the other Contracting Party, and also to the investments existing in accordance with the laws of the Contracting Party on the date this Agreement came into force. However, the provisions of this Agreement shall not apply to claims arising out of events which occurred, or to claims, which had been settled prior to its entry into force.

Article 13. Entry Into Force, Duration and Termination

1. Each Contracting Party shall notify the other in writing of the completion of the internal legal formalities required in its territory for the entry into force of this Agreement. This Agreement shall enter into force on the first day of the second month following the date of receipt of the last notification.

2. This Agreement shall remain in force for a period of twenty years from the date of its entry into force and shall remain in force unless terminated in accordance with paragraph 3 of this Article.

3. Either Contracting Party may, by giving written notice one year in advance to the other Contracting Party, terminate this Agreement at the end of the initial twenty year period or at any time thereafter.

4. With respect to investments made or acquired prior to the date of termination of this Agreement, the provisions of Articles 1 to 12 of this Agreement shall continue to be effective for a further period of twenty years from such date of termination.

5. With the entry into force of this Agreement, the Agreement of November 10, 1978 between the governments of the Kingdom of Sweden and of the Socialist Federal Republic of Yugoslavia on Mutual Protection of Investments shall expire, with respect to Sweden and Bosnia and Herzegovina.

6. This Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall enter into force under the same procedure required for entering into force of the present Agreement.

7. This Agreement shall be applied irrespective of whether or not the Contracting Parties have diplomatic or consular relations.

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

DONE in duplicate at Stockholm this 31st day of October 2000 in Bosnian/Croatian/Serbian, Swedish and English languages, all texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

FOR BOSNIA AND HERZEGOVINA

Dr. Jadranko Prlić

FOR SWEDEN

Anna Lindth