A G R E E M E N T BETWEEN BOSNIA AND HERZEGOVINA AND UKRAINE ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

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

Desiring to extend and intensify the economic co-operation between the two States on the basis of equality and mutual benefit,

Intending to create and maintain favourable conditions for greater investment 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 be conducive to the stimulation of business initiative and will increase economic prosperity of both States,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall mean every kind of assets invested for the purpose of acquisition of economic benefit or other business purpose by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter and in particular, though not exclusively, shall include: a) Movable and immovable property as well as any other property rights such as mortgages and liens or other securities;

b) Shares, stocks and any other form of participation in companies;

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

d) Intellectual property rights such as copyright and neighbouring rights, patents, industrial designs, trademarks, tradenames and know-how;

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

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" shall mean: a) In respect of Bosnia and Herzegovina: (i) Natural person deriving the status as Bosnia and Herzegovina citizen from the law in force in Bosnia and Herzegovina if that person has permanent residence or main place of business in Bosnia and Herzegovina;

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

b) In respect of Ukraine: (i) Natural person having the status of nationals according to the law of Ukraine;

(ii) Any entity established in accordance with and recognised as a legal person by the law of Ukraine, such as corporations, firms, associations, foundations or any similar organisation having the right to conduct economic activities in accordance with the law of Ukraine.

3. The term "returns" shall mean an amount yielded by an investment in the certain period of time and in particular, though

not exclusively, includes royalties or licence fees, profits, interest, dividends, capital gains, fees and other compensations.

4. The term "territory" shall mean: a) In respect of Bosnia and Herzegovina: all land territory of Bosnia and Herzegovina, its territorial sea, whole bed 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.

b) In respect of Ukraine: the territory under the sovereignty of Ukraine and the sea and submarine areas over which Ukraine exercises, in conformity with international law, sovereignty, sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investments

1. Either Contracting Party shall encourage and create favourable, stable and transparent conditions for investors of the other Contracting Party to invest capital in its territory and, within the framework of its laws and regulations, shall admit such investments.

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 in its territory of investors of the other 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 in any case shall not be 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 investors of the other Contracting Party.

2. Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their expansion, management, maintenance, use, enjoyment or disposal of their investments, to treatment 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 of the other Contracting Party.

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, common market, or similar international agreement to which the Contracting Party is or may become a party;

b) Agreements on avoidance of double taxation or any other arrangements relating wholly or mainly to taxation issues.

Article 4. Nationalisation and Expropriation

1. Investments of investors of either 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") in the territory of the other Contracting Party 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 public knowledge in such a way as to effect the value of the investment, whichever is the earlier. The compensation shall include interest rate at 6 month LIBOR basis for the currency the investment has been made in, 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 Contracting Party, concerning the legality of the expropriation, its process and the valuation of the investment in accordance with the principles set out in paragraph 1 of this Article.

Article 5. Compensation for Losses

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, not 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.

Any payments made under this Article shall be without delay, freely transferable in 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) Capital and additional amounts necessary for the maintenance and development of the investment;

b) Returns from the investment as defined in paragraph 1 Article 1 of this Agreement;

c) Funds in repayment of loans related to 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) Unspent earnings and other remuneration of nationals engaged from abroad in connection with the investment;

h) Any preliminary payments that may be made in the name of the investor in accordance with Article 7 of this Agreement.

2. Transfers shall be effected without delay in a convertible currency at the rate of exchange applicable on the date of transfer.

3. The Contracting Parties undertake to accord to such transfers a treatment not less favourable than that accorded to transfers originating from investments made by investors of any third State.

Article 7. Subrogation

1. If a Contracting Party or its designated agency makes a legal payment to any of its investors under a guarantee or a contract of insurance against non-commercial risks given in respect of an investment, the other Contracting Party shall recognise, notwithstanding its rights under the Article 10 of this Agreement, the validity of the subrogation in favour of the former Contracting Party or its agency to any right or title held by the investor.

2. The Contracting Party or its agency that is subrogated in the rights of an investor shall be, in all circumstances, entitled to the same rights and the same treatment as those of the indemnified investor, payments due pursuant to those rights.

3. In the case of subrogation as defined in paragraph 1 of this Article, the investor shall not sue or pursue a claim unless authorised to do so by the Contracting Party or its agency.

Article 8. Settlement of Disputes between an Investor and a Contracting Party

1. Any dispute which may arise between one Contracting Party and an investor of the other Contracting Party in connection with an investment on the territory of that other Contracting Party shall be settled amicably through consultations and negotiations.

2. If a dispute can not be settled in accordance with paragraph 1 of this Article within a period of a six months from the date on which either party to the dispute requested amicable settlement, the investor concerned may submit the dispute either to:

a) The competent court or administrative tribunal of the Contracting Party in the territory of which the investment has been made; or

b) The Arbitration Institute of the Paris International Chamber of Commerce; or

c) Ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade

Law (UNCITRAL); or

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

3. The arbitration award shall be final and binding on both parties to the dispute and shall be executed according to the law of the Contracting Party concerned.

Article 9. Consultations and Exchange of Information

1. Upon the request by either Contracting Party, the other Contracting Party shall, without undue delay, begin consultations concerning interpretation and application of this Agreement.

2. Upon the request by either Contracting Party, information shall be exchanged 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 three 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 three 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 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 court 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. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force thirty days after the date on which the Contracting Parties have notified each other in writing, that the legal procedures required for the entry into force of the Agreement in their respective countries have been fulfilled.

2. This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, one year before the expiry of the initial or any subsequent periods, either Contracting Party notifies the other in writing of its intention to terminate the Agreement.

3. The Agreement shall be applied to investments made or acquired after the time of its entry into force.

4. In respect of investments made prior to the termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten years from the date of termination.

5. 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.

6. 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 at Sarajevo, this _____ day of March 2002, in two originals in the Bosnian/Croatian/Serbian, Ukrainian and English languages, all texts being equally authentic. In case of any divergence of interpretation the English text shall prevail.

FOR BOSNIA AND HERZEGOVINA

FOR UKRAINE