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

The Portuguese Republic and Bosnia and Herzegovina, hereinafter referred to as the Contracting Parties:

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

Intending to create favourable conditions for investments made by investors of one Contracting Party in the territory of the other Contracting Party;

Recognising that the mutual promotion and protection of such investments under this Agreement will be conducive to the stimulation of business initiative and will increase economic prosperity of the Contracting Parties;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1 — The term «investments» means every kind of asset and right 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 including, in particular, though not exclusively:

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

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

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

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

e) Business concessions conferred by law or under a contract or by administrative act of a competent state authority, including concessions to search for, cultivate, extract and exploit natural resources;

f) Assets that are placed at the disposal of a lessee, in the territory of a Contracting Party, under a leasing agreement and in conformity with its laws and regulations.

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 «investors» means:

a) In respect of the Portuguese Republic: i) Natural persons having the nationality of the Portuguese Republic, in accordance with its laws and regulations; and

ii) Legal persons, including corporations, commercial companies or other companies or associations, which have a main office in the territory of the Portuguese Republic, are incorporated or constituted and operate in accordance with the laws and regulations of the Portuguese Republic;

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, in a certain period of time and in particular, though not exclusively, includes royalties or licence fees, profits, interests, dividends, capital gains, fees and other forms of income related to the investment.

In cases where the returns of investments, as defined above, are reinvested, the income resulting from the reinvestment shall also be considered as income related to the first investment. The returns of investments shall be subject to the same protection given to investment. 4 — The term «territory» means:

a) With respect to the Portuguese Republic: the territory of the Portuguese Republic, including the territorial sea or any other area, over which the Portuguese Republic exercises, in accordance with international law, sovereignty, sovereign rights or jurisdiction;

b) With respect to 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 the rights with regard to the seabed and subsoil and the natural resources.

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 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, arbitrary 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 paragraph 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 agreements 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 subject 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 affect the value of the investment, whichever is the earlier. The compensation shall include interest at a normal commercial rate for current transactions 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 or other events considered as such by international law, 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.

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 from the investment;

c) Funds in service, repayment and amortisation of loans, recognised by both Contracting Parties to be 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 any disputes;

g) Any preliminary payments that may be made in the name of the investor in accordance with article 7 of this Agreement;

h) Unspent earnings and other remuneration of workers engaged from abroad in connection with the investment.

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

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 days from the date the requirement for transfer was presented.

4 — Transfers shall be done in accordance with the procedures established by the exchange regulations of the Contracting Party in whose territory the investment was made, which shall not imply a rejection, suspension or denaturalisation of such transfers.

5 — The Contracting Parties undertake to accord to such transfers a treatment no 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 a Contracting Party and an Investor of the other 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 in the territory of that other Contracting Party shall be settled amicably through consultations and negotiations.

2 — If a dispute cannot be settled in accordance with paragraph 1 of this article within a period of three 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) An ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

c) The International Centre for the Settlement of Investment Disputes (hereinafter referred to as the Centre) 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 18th March, 1965 (hereinafter referred to as «the Convention»), in the event both Contracting Parties shall have become a party to the Convention.

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

4 — The arbitration award shall be final and biding on both parties to the dispute and shall be executed according to the laws and regulations of the Contracting Party concerned.

5 — A company which is incorporated or constituted under the laws in force in the territory of one Contracting Party and in which before such dispute arises the majority of shares are owned by investors of the other Contracting Party, shall in accordance with article 25 (2) (b) of the Convention be treated for the purpose of this Convention as the company of the other Contracting Party.

6 — Neither Contracting Party shall pursue through the diplomatic channels any dispute referred to the Centre unless:

a) The Secretary General of the Centre, or a conciliation commission or an arbitral tribunal constituted by the Centre, decides that the dispute is not within the jurisdiction of the Centre; or

b) The other Contracting Party should fail to abide by or to comply with any award rendered by an arbitral tribunal.

7 — The arbitration award shall be based on:

The provisions of this Agreement; The laws of the Contracting Party in whose territory the investment has been made including the rules relative to conflict of laws; and The rules and universally accepted principles ofinternational law. 8 — During the arbitral or execution proceedings a Contracting Party shall not assert as a defence objection, counterclaim, right of a set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received by investor who is contending party, pursuant to an insurance or guarantee contract against political risks.

Article 9. 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, in accordance with the provisions of this article.

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 Arbitral 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, in the absence of any other agreement, 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 also 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. The chairman of the Arbitral Tribunal shall be a national of a third State with which both Contracting Parties maintain diplomatic relations.

5 — The Arbitral 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 costs of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The Arbitral 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 the 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 10. 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 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

This Agreement shall apply to all investments, made by investors from one of the Contracting Parties in the territory of the other Contracting Party in accordance with the respective legal provisions, prior to as well as after its entry into force, but shall not apply to any dispute concerning investments which have arisen before 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 thirty days after the date of the dispatch of the latter of the two notifications. Documents relating to the completion of the internal legal formalities shall be exchanged as soon as possible.

2 — This Agreement shall remain in force for a period of ten years after the date of its entry into force and shall continue in force unless terminated in accordance with paragraph 3 of this article.

3 — Either Contracting Party may, by giving one year in advance written notice to the other Contracting Party, terminate this

Agreement at the end of each ten-year period.

4 — With respect to investments made or acquired prior to the date of termination of this Agreement, the provisions of articles 1 to 12 shall remain in force for a further period of ten years from such 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, dully authorised thereto, have signed this Agreement.

Done at Sarajevo this 12th day of March 2002 in two originals in the Portuguese, Bosnian/Croatian/Serbian and English languages. In case of any divergence of interpretation, the English text shall prevail.

On the occasion of the signing of the Agreement between the Portuguese Republic and Bosnia and Herzegovina on the Mutual Promotion and Protection of the Investments, the undersigned duly authorised to this effect, have agreed also on the following provision, which constitutes an integral part of the said Agreement:

With reference to article 3 of this Agreement:

Done at Sarajevo this 12 day of March 2002 in two originals in the Portuguese, Bosnian/Croatian/Serbian and English languages. In case of any divergence of interpretation, the English text shall prevail.