AGREEMENT between the Government of the Republic of Bulgaria and the Government of the Kingdom of Denmark concerning the Promotion and Reciprocal Protection of Investments

Preamble

The Government of the Kingdom of Denmark and the Government of the Republic of Bulgaria, hereinafter referred to as the Contracting Parties,

DESIRING to create favourable conditions for investments in both States and to intensify the co-operation between private enterprises in both States with a view to stimulating the productive use of resources,

RECOGNIZING that a fair and equitable treatment of investments on a reciprocal basis will serve this aim,

HAVE AGREED as follows:

Article 1. Definitions

For the purpose of this Agreement,

(1) the term »investment« shall comprise every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party in connection with economic activities and acquired for the purpose of establishing lasting economic relations whether in company form or not, including joint ventures provided that the investment has been made in accordance with the laws and regulations of the other Contracting Party and shall include in particular:

(i) Shares, parts or any other form of participation in companies incorporated in the territory of one Contracting Party,

(ii) Returns reinvested, claims to money or other rights relating to services having a financial value,

(iii) Property rights, as well as any other rights as mortgages, privileges, guarantees and any other similar rights as defined in conformity with the law of the Contracting Party in the territory of which the property in question is situated,

(iv) Industrial and intellectual property rights, technology, trademarks, good-will, know-how and any other similar rights,

(v) Business concessions conferred by law or by contract, including the concessions related to natural resources.

(vi) Goods acquired in the expectation or used for the purpose of economic benefits or business purposes, that under a leasing agreement are placed at the disher of a lessee in the territory of one Contracting Party by a lessor being a national of the other Contracting Party or a legal person having its seat in the territory of that Contracting Party, shall be treated as an investment.

(2) The term »returns« shall mean the amounts yielded by an investment and in particular includes profit, interest, capital gains, dividends, royalties or fees.

Such amounts, and in case of reinvestment amounts yielded from the reinvestment, shall be given the same protection as the investment.

(3) The term »investor« shall mean with regard to either Contracting Party:

(a) Natural persons having status as nationals of either Contracting Party according to its law.

(b) Any entity established in accordance with, and recognized as a juridical person by the law of that Contracting Party, such as corporations, firms, associations, development finance institutions, foundations or similar entities irrespective of whether their liabilities are limited and whether or not their activities are directed at profit.

(4) The term »territory« shall mean in respect of each Contracting Party the territory under its sovereignty and the sea and submarine areas over which the Contracting Party exercises, in conformity with international law, sovereignty, sovereign rights or jurisdiction.

Subject to Article 14 the present Agreement shall not apply to the Faroe Islands and Greenland.

Article 2. Promotion of Investment

Each Contracting Party shall admit the investment by investors of the other Contracting Party in accordance with its legislation and administrative practice, and promote such investments as far as possible including the establishments of representative offices.

Article 3. Protection of Investment

(1) Investments and activities associated with investments of investors of either 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 management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

(2) Neither Contracting Party shall in its territory subject investments made by investors of the other Contracting Party or returns of such investments as well as their management, maintenance, use, enjoyment or disposal of their investment to treatment less favourable than that which it accords to investments or returns of its own investors or any third State (whichever of these standards is more favourable from the point of view of the investor).

Article 4. Exceptions

(1) The provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the investors of either Contracting Party or of any third State 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 resulting from:

(a) Any existing or future customs union, regional economic organizations, or similar international agreement to which either of the Contracting Parties is or may become a party, or

(b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

(2) The provisions of this Agreement shall be without prejudice to the right of each Contracting Party:

(a) To make or maintain limited exceptions to treatment according to Article 3 with a view to observing its laws and regulations, orArticle 3 with a view to observing its laws and regulations, or

(b) To take protective measures in relation to Article 7, section 1, in respect of capital movements provided such measures are taken in accordance with multilateral agreements to which either of the Contracting Parties is or may become a party.section 1, in respect of capital movements provided such measures are taken in accordance with multilateral agreements to which either of the Contracting Parties is or may become a party.

Article 5. Expropriation and Compensation

Investments of investors of either Contracting Party shall not be nationalized or expropriated (hereinafter referred to as »expropriation«) in the territory of the other Contracting Party except for a public purpose related to the internal needs of the expropriating Party, on a basis of non-discrimination and against prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or impending expropriation became public knowledge, shall be made without delay and shall include interest at LIBOR until the date of payment, be effectively realizable in convertible currency and be freely transferable. There shall be legal provision giving an investor concerned a right to prompt review of the legality of the measure taken against the investment and of their valuation in accordance with the principles set out in this section by due process of law in the territory of the Contracting Party making the expropriation.

Article 6. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riot in the territory of the latter Contracting Party, 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 of these standards is the more favourable from the point of view of the investor). Payments resulting from any provision in this Article shall be freely transferable, made without delay and shall include interest at LIBOR until the day of payment and be effectively realizable in convertible currency.

Article 7. Repatriation and Transfer of Capital and Returns

(1) Each Contracting Party shall without delay allow the transfer of:

(a) The invested capital or the proceed of total or partial liquidation or alienation ofthe investment;

(b) The returns realized;

(c) The payments made for the reimbursement of the credits for investments and interests due;

(d) An approved portion of the earnings of the expatriates who are allowed to work in an investment made in the territory of the other Contracting Party.

(2) Transfers of currency pursuant to Article 5, 6 and section (1) of this Article shall be made in the convertible currency in which the investment has been made or in any convertible currency if so agreed by the investor, at the official rate of exchange in force at the date of transfer.

Article 8. Subrogation

If one Contracting Party or its designated agency makes payments to its own investors under a guarantee it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) The assignment, whether under the law or pursuant to a legal transaction in that country, of any right or claim by the investor to the former Contracting Party or to its designated agency, as well as

(b) That the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise to the same extent as the investor the rights and enforce the claims of that investor and shall assume the obligations related to the investment.

Article 9. Disputes between a Contracting Party and an Investor

(1) Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment on the territory of that other Contracting Party shall be subject to negotiations between the parties in dispute.

(2) If any dispute between an investor of one Contracting Party and the other Contracting Party continues to exist after a period of six months, the dispute may be referred to the competent courts of the other Contracting Party where the investment has taken place.

(3) The investor may instead choose to submit the dispute to ad hoc arbitration with regard to Article 5, 6 and 7 in particular with regard to the existence of compensation and to the amount of compensation, the conditions for compensation as well as the interests in case of delay of payment.

In case of arbitration the dispute will be settled by the international ad hoc arbitral tribunal established under the Arbitration Rules under the United Nations Commission on International Trade Law.

The arbitral awards shall be final and binding on both Parties to the dispute.

(4) Concerning other Articles of this Agreement the investor shall be entitled to bring the matter before his own Contracting Party with a view to reaching a settlement according to Article 10 and 12 of this Agreement.Article 10 and 12 of this Agreement.

Article 10. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled through negotiations between the Contracting Parties.

(2) If such a dispute cannot be settled within three months from the beginning of negotiation, it shall upon the request of either Contracting Party, be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way:

Within three months of the 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 Contracting Party 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 any of the periods specified 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 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 arbitral tribunal shall apply the provisions of this Agreement, other Agreements concluded between the Contracting Parties, and the general principles of international law. It shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties. The arbitral tribunal determines its own procedure.

(6) 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.

Article 11. Amendments

At the time of entry into force of this Agreement or at any time thereafter the provisions of this Agreement may be amended in such manner as may be agreed between the Contracting Parties. Such amendments shall enter in force when the Contracting Parties have notified each other that the constitutional requirement for the entry into force have been fulfilled.

Article 12. Consultations

The representatives of the Contracting Parties shall, whenever needed, hold meetings in order to review the implementation of this Agreement. These meetings shall be held on the proposal of one of the Contracting Parties at a place and at a time agreed upon through diplomatic channels.

Article 13. Applicability of this Agreement

The provisions of this Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party after January 1, 1960.

Article 14. Territorial Extension

At the time of entry into force of this Agreement, or at any time thereafter, the provisions of this Agreement may be extended to the Faroe Islands and Greenland as may be agreed between the Contracting Parties in an Exchange of Notes.

Article 15. Entry Into Force

This Agreement shall enter into force thirty days after the date on which the Governments of the Contracting Parties have notified each other that the constitutional requirements for the entry into force of this Agreement have been fulfilled.

Article 16. Duration and Termination

(1) This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, after the expiry of the initial period of ten years, either Contracting Party notifies in writing the other Contracting Party of its intention

to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting Party.

(2) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 10 shall remain in force for a further period of ten years from that date.

In witness whereof the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Copenhagen on 14 April, 1993 in Danish, Bulgarian and English languages, all texts being equally authentic.

In the case of divergence of interpretation, the English text shall prevail

For the Government of the Kingdom of Denmark Poul Nyrup Rasmussen

For the Government of the Republic of Bulgaria