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

The Czech Republic and Bosnia and Herzegovina 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" means every kind of asset invested in connection with economic activities by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with law 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 pledges;

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

(c) Claims to money or to any performance under contract having a financial value, associated with an investment;

(d) Intellectual property rights such as copyright and neighbouring rights, industrial designs, technical processes, trademarks, tradenames, trade secrets, patents, know-how and goodwill associated with an investment;

(e) Any right conferred by laws or under contract and licenses and permits pursuant to laws, including the concessions to search for, extract, cultivate or 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 any natural or legal person who invests in the territory of the other Contracting Party.

(a) In respect of the Czech Republic:

(i) The term "natural person" shall mean any natural person having the nationality of the Czech Republic in accordance with its laws;

(ii) The term "legal person" shall mean any entity incorporated or constituted in accordance with, and recognised as legal person by its laws, having the permanent seat in the territory of the Czech Republic.

(b) In respect of Bosnia and Herzegovina:

(i) The term "natural person" shall mean 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) The term "legal person" shall mean 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 "return" means an amount yielded by an investment and in particular, though not exclusively, includes royalties or licence fees, profits, interest related to loans, shares, dividends, capital gains and fees.

4. The term "territory" means:

(a) With respect to the Czech Republic: the territory of the Czech Republic over which it exercises sovereignty, sovereign rights and jurisdiction in accordance with international law;

(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 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, stabile and transparent conditions for investors of the other Contracting Party to make investments 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 fair and equitable 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 investments and returns of 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, monetary union, economic union, common market, or similar international agreements leading to such unions or institutions, or other forms of regional co-operation to which either Contracting Party is or may become a party; or

(b) International agreements or arrangements relating wholly or mainly to taxation.

4. Nothing in this Agreement shall prevent either Contracting Party from applying new measures adopted within the framework of one of the forms of regional cooperation referred to in paragraph 3 a) of this Article, which replace the measures previously applied by that Contracting Party.

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 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 to effect 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 Party, concerning the legality of expropriation, its process and of the valuation of the investment in accordance with the principles set out in this Article.

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 that 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 events referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

(a) Requisitioning of their property by the forces or authorities of the latter Contracting Party, or

(b) Destruction of their property by its forces or authorities of the latter Contracting Party, which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded restitution or just, adequate and effective compensation for the losses sustained during the period of the requisitioning or as result of the destruction of the property. Resulting payments shall be freely transferable in a freely convertible currency without delay.

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 and other current income from the investment;

(c) Funds in repayment of loans related to an investment;

(d) Royalties or fees;

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

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

(g) Payments arising out of the settlement of a dispute according to this Agreement;

(h) Unspent earnings and other remuneration of nationals engaged from abroad who are employed and allowed to work in connection with the investment in the territory of the other Contracting Party.

2. Transfers shall be effected without any restriction and without undue delay in a freely convertible currency at the prevailing market rate for current transaction applicable on the date of transfer.

3. Transfers shall be considered to have been made "without undue delay" in the sense of paragraph 2 of this Article when they have been made within the period normally necessary for the completion of the transfers. Such period shall under no circumstances exceed three months.

Article 7. Subrogation

1. If a Contracting Party or its designated agency makes a payment to its own investors under a guarantee or a contract of insurance against non-commercial risks it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise, notwithstanding its rights under Article 10 of this Agreement:

(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 its designated agency, as well as,

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

2. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

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 six months from the date on which either party to the dispute requested amicable settlement, the investor concerned may submit the dispute either to:paragraph 1 of this Article within a period of 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) Ad hoc arbitral tribunal established under the Arbitration Rules of Procedure of the United Nations Commission on International Trade Law (UNCITRAL); or

(c) The International Centre for 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 18 March 1965 (hereinafter referred to as "the Convention").

3. 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.

4. 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 conflicts of law; and

— the rules and universally accepted principles of international law.

Article 9. Consultations and Exchange of Information

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

2. Upon 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 the Contracting Parties

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

2. If a dispute between the Contracting Parties cannot be settled in accordance with paragraph 1 of this Article within the period of 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 an 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 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.

Article 11. Applicability of this Agreement

The provisions of this Agreement shall apply to future investments made 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 12. Application of other Rules and Special Commitments

1. Where a matter is governed simultaneously both by this Agreement and by another international agreement to which both Contracting Parties are parties, nothing in this Agreement shall prevent either Contracting Party or any of its investors who own investments in the territory of the other Contracting Party from taking advantage of whichever rules are more favourable to his case.

2. If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party in accordance with its laws and regulations or other specific provisions of contracts is more favourable than that accorded by the Agreement, the more favourable shall be accorded.

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 thirtieth day after the date of the second notification.

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 the initial ten 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 all of the other Articles of this Agreement shall continue to be effective 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 in 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 in duplicate at ....., this .....day of ....., in the Czech, Bosnian/Croatian/Serbian and English languages, all texts being equally authentic. In case of any divergence of interpretation the English text shall prevail.

FOR THE CZECH REPUBLIC

_____

FOR BOSNIA AND HERZEGOVINA

_____