Agreement for the promotion and reciprocal protection of investments between the Kingdom of Spain and the Republic of Slovenia

The Republic of Slovenia and the Kingdom of Spain, hereinafter referred to as "the Contracting Parties",

Desiring to intensify their economic cooperation for the mutual benefit of both countries,

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

And

Recognizing that the promotion and protection of investments under this Agreement will stimulate initiatives in this field,

Have agreed as follows:

Article I. Definitions

For the purposes of the present Agreement,

1. The term "investor" means with regard to either Contracting Party:

a) Natural persons who, according to the law of that Contracting Party, are considered to be its nationals.

b) Legal entities, including companies, associations, partnerships, corporations and any other organization incorporated or constituted or, otherwise, duly organized under the law of that Contracting Party.

2. The term "investment" means every kind of asset and in particular, although not exclusively, the following:

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

b) Shares and stocks in and debentures of a company or any other form of participation in a company;

c) Claims to money such as loans or claims to any performance under contract having economic value;

d) Intellectual property rights, including industrial property rights such as patents, licences, trademarks, tradenames, technical processes, as well as know-how and goodwill;

e) Rights to undertake economic and commercial activities conferred by law or by virtue of a contract, including concessions to search for, cultivate, extract or exploit natural resources.

Investments made in the territory of one Contracting Party by any legal entity of that same Contracting Party but actually controlled by investors of the other Contracting Party shall likewise be considered as investments of investors of the latter Contracting Party if they have been made in accordance with the laws and regulations of the former Contracting Party.

Any change in the form in which assets are invested or reinvested does not affect their character as investments.

3. The term "returns" means the amounts yielded by an investment and includes, in particular although not exclusively, profit, dividends, interest, capital gains, royalties and fees.

4 . The term "territory" designates the land territory and territorial waters of each of the Contracting Parties, as well as the exclusive economic zone and the continental shelf that extend outside the limits of the territorial waters of each of the Contracting Parties, over which they have or may have jurisdiction and/or sovereign rights, pursuant to international law.

Article II. Promotion and Admission

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

2. When a Contracting Party shall have admitted an investment in its territory, it shall, in accordance with its laws and regulations, grant the necessary permits in connection with such an investment and with the carrying out of the investment. Each Contracting Party shall, whenever needed, endeavour to issue the necessary authorizations concerning the activities of consultants and other qualified persons, regardless of their nationality.

3. This Agreement shall be applicable to investments made before or after its entry into force by investors of one Contracting Party in the territory of the other Contracting Party.

Article III. Protection

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security. In no case shall a Contracting Party accord to such investments treatment less favourable than that required by international law.

2. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the operation, management, maintenance, use, enjoyment, expansion, sale and, if it is the case, the liquidation of such investments. Each Contracting Party shall observe any contractual obligation it may have entered into with regard to investments of investors of the other Contracting Party.

Article IV. National Treatment and Most Favoured Nation Treatment

1. Each Contracting Party shall in its territory accord to investments of investors of the other Contracting Party treatment no less favourable than that which it accords to the investments of its own investors or to investments of investors of any third State, whichever is more favourable to the investor concerned.

2. This treatment shall not extend to the privileges which either Contracting Party may grant to investors of a third State by virtue of its membership of, or association with any existing or future customs union, common market or similar international agreement to which either of the Contracting Parties is or may become a party.

3. The treatment granted under this Article shall not apply to taxation matters.

Article V. Expropriation

1. Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated or subjected to measures having equivalent effect to nationalization or expropriation (hereinafter referred to as "expropriation") except for public interest, in accordance with due process of law, on a non discriminatory basis and against the payment of prompt, adequate and effective compensation.

2. Such compensation shall amount to the fair market value of the investment expropriated immediately before the expropriation or impending expropriation became public known, whichever is the earlier (hereinafter referred to as the "valuation date"). It shall be paid without delay, be effectively realizable and freely transferable.

3. Such market value shall be calculated in a freely convertible currency at the market rate of exchange prevailing for that currency on the valuation date. Compensation shall include interest at a commercial rate established on a market basis for the currency of valuation from the date of expropriation until the date of payment.

4. The investor affected shall have the right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial authority or other competent and independent authority of that Contracting Party, of his or its case to determine whether such expropriation and of the valuation of his or its investment and the payment of compensation conform to the principles set out in this Article.

5. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of this Article are applied so as to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

Article VI. Compensation for Losses

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or to other armed conflict, state of national emergency, revolution, insurrection, civil disturbance or any other similar event, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other settlement, treatment 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 investor concerned. Resulting payments shall be freely transferable.

2. Without prejudice to paragraph 1), an investor of one Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in the territory of the other Contracting Party resulting fromparagraph 1), an investor of one Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss 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 was not required by the necessity of the situation,

Shall be accorded by the latter Contracting Party restitution or compensation which in either case shall be prompt, adequate and effective. Resulting payments shall be made without delay and be freely transferable.

Article VII. Transfers

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

a) The initial capital and additional amounts needed for the maintenance or increase of an investment;

b) Investment returns, as defined in Article I;Article I;

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

d) Compensations provided for under Articles V and VI;Articles V and VI;

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

f) Earnings and other remuneration of personnel engaged from abroad in connection with an investment;

g) Payments arising out of the settlement of a dispute.

2. Transfers under the present Agreement shall be made without delay in a freely convertible currency at the market rate of exchange prevailing on the date of transfer.

3. The Contracting Parties shall grant to transfers referred to in this present Article treatment no less favourable than that accorded to the transfer of payments originating from investments made by investors of any third State.

Article VIII. More Favourable Terms

If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than that provided for by this Agreement, such regulation shall, to the extent that it is more favourable, prevail over this Agreement.

Article IX. Subrogation

If one Contracting Party or its designated Agency makes a payment under an indemnity, guarantee or contract of insurance against non-commercial risks given in respect of an investment made by any of its investors in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment of any right or claim of such investor to the former Contracting Party or its designated Agency and the right of the former Contracting Party or its designated Agency to exercise, by virtue of subrogation, any such right and claim to the same extent as its predecessor in title. This subrogation will make it possible for the former Contracting Party or its designated Agency to be the direct beneficiary of any payment

for indemnification or other compensation to which the investor could be entitled.

Article X. Settlement of Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties relative to the interpretation or application of this Agreement shall as far as possible be settled through diplomatic channels.

2. If it were not possible to settle the dispute in this way within three months from the start of the negotiations, it shall be submitted, at the request of either of the two Contracting Parties, to an arbitral tribunal.

3. The arbitral tribunal shall be set up in the following way: each Contracting Party shall appoint one arbitrator and these two arbitrators shall elect a national of a third country as Chairman. The arbitrators shall be appointed within three months and the Chairman within five months from the date on which either of the two Contracting Parties informed the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.

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 the 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.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 the 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 issue its decision on the basis of respect for the law, of the provisions contained in this Agreement or in other agreements in force between the Contracting Parties, and as well as of the generally accepted principles of international law.

6. Unless the Contracting Parties decide otherwise, the arbitral tribunal shall lay down its own procedure.

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

8. Each Contracting Party shall bear the expenses of its own arbitrator and those connected with representing it in the arbitration proceedings. The other expenses, including those of the president, shall be borne in equal parts by the two Contracting Parties.

Article XI. Disputes between One Contracting Party and Investors of the other Contracting Party

1. Disputes that may arise between one of the Contracting Parties and an investor of the other Contracting Party with regard to an investment in the sense of the present Agreement, shall be notified in writing, including a detailed information, by the investor to the former Contracting Party. As far as possible, the parties concerned shall endeavour to settle these disputes amicably.

2. If these disputes cannot be settled amicably within six months from the date of the written notification mentioned in paragraph 1, the dispute may be submitted, at the choice of the investor, to:paragraph 1, the dispute may be submitted, at the choice of the investor, to:

— the competent court of the Contracting Party in whose territory the investment was made; or

— an ad hoc tribunal of arbitration established under the Arbitration Rules of the United Nations Commission on International Trade Law; or

— the International Centre for Settlement of Investment Disputes (ICSID) set up by the "Convention on Settlement of Investment Disputes between States and Nationals of other States", opened for signature in Washington D.C. on March 18th 1965.

Article XII. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the date on which the Contracting Parties shall have notified each other that their respective constitutional formalities required for the entry into force of international agreements have been completed. It shall remain in force for an initial period of ten years and, by tacit renewal, for consecutive periods of two years.

2. Either Contracting Party may terminate this Agreement by prior notification in writing, six months before the date of its expiration.

3. With respect to investments made prior to the date of termination of this Agreement, the provisions of all of the other Articles of this Agreement shall thereafter continue to be effective for a further period of ten years from such date of termination.

DONE in duplicate in three originals in Spanish, Slovenian and English languages, all of which are equally authentic, in Madrid on 15th July, 1998.

For the Republic of Slovenia

Vojka Ravbar, (s)

For the Kingdom of Spain

Elena Pisionero Ruiz, (s)