Agreement between the Swiss Confederation and Serbia and Montenegro on the Promotion and Reciprocal Protection of Investments

The Swiss Confederation on the one hand, and Serbia and Montenegro on the other, hereinafter referred to as the "Contracting Parties,"

Desiring to intensify economic cooperation to the mutual benefit of both Contracting Parties,

Intending to create and maintain favourable conditions for investments of investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing the need to promote and protect foreign investment with the aim to stimulate capital and technology flows and thereby promoting economic prosperity of both Contracting Parties,

Convinced that these objectives can be achieved without relaxing health, safety and environmental standards of general application,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investment" means any kind of assets invested in the territory of one Contracting Party by investors of the other Contracting Party, in accordance with the laws and regulations of the former Contracting Party and includes in particular, though not exclusively:

(a) movable and immovable property as well as any other rights in rem, such as servitudes, mortgages, liens, pledges, and usufructs;

(b) shares, parts or any other kind of participation in companies, and any rights derived therefrom;

(c) claims to money or to any performance pursuant contract having an economic value;

(d) copyrights, industrial property rights (such as patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), technical processes, know-how, and goodwill;

(e) concessions under public law, including concessions to search for, extract or exploit natural resources, as well as any other rights given by law, by contract or by decision of the authority in accordance with the law.

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

(2) 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, corporations, business associations and other organizations, which are constituted or otherwise duly organised under the law of that Contracting Party and have their seat, together with real economic activities, in the territory of that same Contracting Party.

(3) The term "returns" means the amounts yielded by an investment and includes in particular, profits, interest, capital gains, dividends, royalties and fees.

(4) The term "territory" means with respect to each Contracting Party, the land territory and the internal waters as well as, where applicable, the sea, its seabed and its subsoil beyond the territorial sea over which the Contracting Party concerned may exercise, in accordance with its national laws as well as international law, sovereign rights or jurisdiction.

Article 2. Scope of Application

The present Agreement shall apply to investments in the territory of one Contracting Party that are owned or controlled, directly or indirectly by investors of the other Contracting Party. It applies to such investments whether made prior to or after its entry into force, however not to disputes related to facts which occurred before that date.

Article 3. Promotion, Admission

(1) Each Contracting Party shall in its territory encourage investments by investors of the other Contracting Party, including through the exchange of information between the Parties on investment opportunities, and 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 provide, in accordance with its laws and regulations, all necessary permits or authorisations in connection with such investments including permits for the carrying out of license agreements and contracts for technical, commercial or administrative assistance as well as authorisations required for the activities of managerial and technical personnel of the investor's choice.

(3) Each Contracting Party shall without delay publish or otherwise make publicly available, its laws, regulations, procedures and administrative decisions of general application, as well as international agreements, that may affect the investments of investors of the other Contracting Party.

Article 4. Protection and General Treatment

Each Contracting Party shall accord to investments made in its territory by investors of the other contracting party fair and equitable treatment and full protection and full and constant security. no Contracting Party shall in any way hinder unjustified or discriminatory measures by the Management, the management, maintenance, use, jouis-sance, increased or disposal of such investments.

Article 5. National Treatment and Most-favoured-nation Treatment

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

(2) Each Contracting Party shall accord investors of the other Contracting Party, as regards the operation, management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that which it accords to its own investors or investors of any third State, whichever is more favourable treatment to the investor concerned.

(3) If a Contracting Party has accorded or accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, customs union or common market or by virtue of an agreement on the avoidance of double taxation, it shall not be obliged to accord such advantages to investors of the other Contracting Party.

Article 6. Expropriation, Compensation

(1) Neither Contracting Party shall take, either directly or indirectly, measures of expropriation, nationalization or any other measures having the same nature or the same effect against investments of investors of the other Contracting Party (hereafter referred to as "expropriation"), unless the measures are taken in the public interest, on a non-discriminatory basis and under due process of law, and provided that provisions be made for prompt, effective and adequate compensation. Such compensation shall amount to the market value of the investment expropriated immediately prior to or at the time when decision for expropriation was announced or became publicly known to the public, whichever is earlier. The amount of compensation shall be settled in a freely convertible currency and paid without delay to the investor concerned.

(2) The Investor affected by the expropriation 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, of his case and of the valuation of his investment in accordance with the principles set out in this article.

(3) If 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, to the extent necessary and subject to its laws, ensure that compensation according to in paragraph (1) of this article will be made available to such investors.

Article 7. Compensation for Losses

(1) Investors of one Contracting Party whose investments have suffered losses due to war or any other armed conflict, revolution, state of emergency, rebellion, civil disturbance or any other similar event in the territory of the other Contracting Party shall benefit, on the part of this latter, from a treatment in accordance with Article 5 of this Agreement as regards restitution, indemnification, compensation or other settlement.

(2) Without prejudice to paragraph (1) of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

(a) requisitioning of their investment or part thereof by the forces or authorities of the other Contracting Party; or

(b) destruction of their investment or part thereof by the forces or authorities of the other Contracting Party, which was neither caused in combat action nor required by the necessity of the situation,

shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective. Resulting payments shall be freely transferable and be made without delay in a freely convertible currency.

Article 8. Free Transfer

(1) Each Contracting Party shall grant to investors of the other Contracting Party the transfer without restriction or delay in a freely convertible currency, of the amounts relating to their investments, in particular of:

(a) returns;

(b) amounts to fulfil contractual obligations, including under loan agreements;

(c) earnings and other remuneration of personnel engaged from abroad in connection with the investment;

(d) the initial capital and additional amounts to maintain or increase the investment;

(e) the proceeds of the partial or total sale or liquidation of the investment, including possible increment values;

(f) payments arising under Articles 6, 7 and 12 of this Agreement.

(2) Unless otherwise agreed with the investor, transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force the Contracting Party in whose territory the investment was made.

(3) For the avoidance of doubt it is confirmed that the right of an investor to freely transfer amounts in relation to his investment is without prejudice to fiscal and other financial obligations towards the host Contracting Party such an investor may have.

Article 9. Specific Commitments

Each Contracting Party shall observe any other commitment it may have entered into with regard to an specific investment by an investor of the other Contracting Party, which the investor could rely on in good faith, when establishing, acquiring or expanding an investment.

Article 10. More Favourable Provisions

If the provisions in the legislation of either Contracting Party or rules of international law entitle investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such provisions or rules shall to the extent that they are more favourable prevail over this Agreement.

Article 11. Principle of Subrogation

(1) If a Contracting Party or its designated agency has made a payment in accordance with a financial guarantee against non-

commercial risks concerning an investment by one of its investors in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party by virtue of the principle of subrogation into the rights of the investor.

(2) The rights or claims so subrogated shall not exceed those of the investor.

Article 12. Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party, consultations will take place between the parties concerned.

(2) If these consultations do not result in a resolution within six months from the date of the written request for consultations, the investor may submit the dispute either to the courts or administrative tribunals of the Contracting Party in whose territory the investment has been made or to international arbitration. in the latter event the investor has the choice between either of the following:

(a) the International Centre for Settlement of Investment Disputes (ICSID), provided for by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on March 18, 1965 (hereinafter the "Convention of Washington"); and

(b) an ad hoc arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on United Nations Commission on International Trade Law (UNCITRAL).

(3) Each Contracting Party gives its unconditional and irrevocable consent to the submission of an investment dispute to international arbitration.

(4) A company which has been incorporated or constituted according to the laws in force in the territory of one Contracting Party and which, before a dispute arises, was under the control of investors of the other Contracting Party, shall, in accordance with Article 25 (2), (b) of the Convention of Washington, be treated as a company of the other Contracting Party.

(5) The Contracting Party which is a party to the dispute shall at no time whatsoever during the process assert as a defence the fact that the investor has received, by virtue of an insurance contract, a compensation covering the whole or part of the incurred damage.

(6) Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to international arbitration unless the other Contracting Party does not comply with the arbitral award.

(7) The arbitral award shall be final and binding for the parties to the dispute and shall be executed without delay according to the law of the Contracting Party concerned.

Article 13. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall if possible, be settled through diplomatic channels.

(2) If both Contracting Parties fail to reach an agreement within six months after the beginning of the dispute between themselves, the latter shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a chairman who shall be a national of a third State.

(3) If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed, upon request of that Contracting Party by the President of the International Court of Justice.

(4) If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

(5) If in the cases specified in paragraph (3) and (4) of this Article, the President of the International Court of Justice is prevented from carrying out the said function or is a national of either Contracting Party, the appointment shall be made by the Vice-President and if the latter is prevented or is a national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.

(6) Subject to other provisions made by the Contracting Parties, the tribunal shall determine its own procedure. Each Contracting Party shall bear the costs 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 unless the arbitral tribunal decides otherwise.

(7) The decisions of the tribunal are final and binding for each Contracting Party.

Article 14. Final Provisions

(1) This Agreement shall enter into force on the day when both Governments have notified each other that they have complied with the legal requirements for the entry into force of international agreements, and shall remain binding for a period of ten years. Unless written notice of termination is given six months before the expiration of this period, the Agreement shall be considered as renewed on the same terms for a period of two years, and so forth.

(2) In case of official notice as to the termination of the present Agreement, the provisions of Articles 1 to 13 shall continue to be effective for a further period of ten years for investments made before the date of termination.

In WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

Done in duplicate at Belgrade ,on 7th December 2005, in the French, Serbian and English languages, each text being equally authentic. In case of divergences the English text shall prevail.

For the Swiss Confederation:

Wilhelm Meier

For Serbia and Montenegro:

Predrag Ivanovic