AGREEMENT BETWEEN THE GOVERNMENT OF THE PORTUGUESE REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF BULGARIA FOR THE PROMOTION AND MUTUAL PROTECTION OF INVESTMENTS

The Government of the Portuguese Republic and the Government of the Republic of Bulgaria, hereinafter referred to as the Contracting Parties:

Encouraged by the desire to strengthen economic cooperation between the two States;

With a view to create favourable conditions for investors from one Contracting Party in the territory of the other Contracting Party;

Recognizing that the mutual promotion and protection of investments in accordance with this Agreement stimulates the iniciatives on this field;

Have agreed as follows:

Article 1.

For the purpose of this Agreement:

1) The term "investments" shall mean every kind of assets connected with economic activities invested by an investor of one of the Contracting Parties in the territory of the other Contracting Party in accordance with the laws of the latter and shall include in particular:

a) Property rights and other real rights;

b) Shares, stocks or other securities materializing participation in companies or any other form of participation;

c) Outstanding claims to money or any other rights having an economic value;

d) Copyrights, industrial property rights (such as patents, technical processes, trade marks and names, names of company, industrial designs, know-how and goodwill);

e) Concessions conferred by law, under a contract or an administrative act of a competent state authority, and in particular for prospect, research and exploitation of natural resources.

No subsequent change in the form in which the investments have been made shall affect their substance as such, provided that such a change does not contradict the laws of the relevant Contracting Party; 2) The term "returns" shall mean all amounts yielded by investments, such as profits, dividends, interests, and other lawful income;

3) The term "liquidation of investment" shall mean that the investment has been terminated in accordance with the legal provisions in force in the country in which the investment in question has been made;

4) The term "investor" shall mean:

a) A natural person who is a national of either Contracting Party, in accordance with its applicable law;

b) Corporations, including companies, or other forms of association, with or without juridical personality, which have a main office in the territory of one of the Contracting Parties and are constituted in accordance with the law of that Contracting Party;

5) The term "territory" shall mean the territory under the sovereignty of the Republic of Bulgaria, on the one hand, and of the Portuguese Republic, on the other hand, including the territorial sea, as well as the continental shelf, and the exclusive economic zone over which the respective State exercises sovereign rights or jurisdiction in conformity with international law.

Article 2.

1 — Both Contracting Parties shall mutually promote and protect in their respective territories investments of the investors of the other Contracting Party and admit such investments in accordance with their laws and regulations, and accord them fair and equitable treatment and protection.

2 — In case of reinvestment of returns from an investment, these reinvestments and their returns shall enjoy the same protection as the initial investment.

3 — In compliance with its laws and regulations, each Contracting Party shall consider favourably questions concerning entry, stay, work and movement in its territory of nationals of the other Contracting Party who carry out activities connected with the investments as defined in the present Agreement and of the members of their families forming part of their household.

Article 3.

1 — Neither Contracting Party shall subject investments in its territory made by investors from the other Contracting Party to treatment less favourable than that accorded to investments of its own investors or to investment of investors of any third State, whichever is more favourable.

2 — Neither Contracting Party shall subject investors of the other Contracting Party with regard to activity connected with the maintenance, use and operation of their investments made in the territory of the first Contracting Party, to treatment less favourable then that accorded to its own investors or to investors of any third State, whichever is more favourable.

3 — The foregoing provisions of this article do not affect more favourable treatment already accorded or to be accorded by the Contracting Parties to investments made by investors from third States resulting from:

a) Membership of customs unions, free trade areas and other similar forms of economic cooperation;

b) Agreements on avoidance of double taxation.

4 — Either Contracting Party reserves the right to make or maintain, in compliance with its legislation, exceptions from national treatment granted according to paragraph 1 and 2 of this article.

Article 4.

1 — Investments made by investors from one of the Contracting Parties in the territory of the other Contracting Party shall not be expropriated, nationalized or subject to other measures with effects equivalent to expropriation or nationalisation (hereinafter referred to as expropriation), except by virtue of law, in the public interest, on a non discriminatory basis and against prompt compensation.

The compensation shall amount to the market value of the investment at the time of the expropriation, shall be paid without delay and shall carry an annual rate of interest equal to 12 months LIBOR quoted for the convertible currency in which the investments were made until the time of payment. The payment of such compensation shall be freely transferable. 2 — Investors from one of the Contracting Parties who suffer investment losses in the territory of the other Contracting Party due to war, armed conflict, state of national emergency or other similar events shall be accorded treatment no less favourable than that accorded to investors of any third State. Resulting compensations shall be freely transferable.

Article 5.

1 — Pursuant to its own legislation, each Contracting Party shall permit investors from the other Contracting Party, after the fulfilment of due tax obligations, the free transfer of sums related to investments, such as:

a) Capital and additional amounts necessary to maintain or increase the investment;

b) The returns from the investment;

c) Funds in service, repayment and amortisation of loans, recognized by both parties to be an investment;

d) The proceeds obtained from the sale or from the total orpartial liquidation of the investment;

e) The compensations in accordance with article 4 of this Agreement;

f) Any preliminary payments that may be made in the name of the investor, in accordance with article 6 of this Agreement;

g) The remuneration received by the nationals of the other Contracting Party for work or services done in connection with investments made in its territory, in accordance with its laws and regulations.

2 — The transfers referred to in the preceding paragraph shall be made without delay at the exchange rate applicable on the date of the transfer in the territory of the Contracting Party where the investment was made.

3 — For the purpose of this article a transfer shall be considered made without delay when this is done within the period normally required for fulfilling the respective formalities in the territory of the Contracting Party where the investment was made. The period will begin from the day on which the application accompanied by the required documents is made and may in no case whatsoever exceed three months.

Article 6.

1 — 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.

2 — In case of subrogation, as defined in paragraph 1 of this article, the investor shall not intend any judicial procedure without previous authorisation from the Contracting Party or one of its designated agency.

Article 7.

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 — Should the Contracting Parties fail to reach such a settlement within twelve months after entering into negotiations, the dispute 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 from 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 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, 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 chairman and the members of the tribunal have to be nationals of States with which both Contracting Parties maintain diplomatic relations.

6 — The arbitral tribunal shall reach its decision on the basis of the provisions of the present Agreement concluded between the Contracting Parties as well as the generally accepted principles and rules of international law. The arbitral tribunal reaches its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties. The tribunal determines its own procedure.

7 — 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.

Article 8.

1 — Disputes between an investor of one of the Contracting Parties and the other Contracting Party concerning an obligation of the latter under this Agreement, in relation to an investment of the former, shall, as far as possible, be settled by the disputing parties in an amicable way.

2 — If such disputes cannot be settled within six months from the date either party requested amicable settlement, the investor concerned may submit the dispute to the competent court of the Contracting Party.

3 — In case of disputes with regard to articles 4 and 5 of this Agreement the investor concerned may choose, instead, to submit the dispute for settlement by arbitration to:

a) An ad-hoc arbitral tribunal to be established under the arbitration rules of the United Nations Comission on International Trade Law (UNCITRAL); or

b) The International Centre for Settlement of Investment Disputes, in the event that the Republic of Bulgaria becomes a party to the Convention of Investment Disputes between States and Nationals of other States done at Washington, March 18th 1965 (ICSID Convention).

4 — The award shall be final and binding on both parties to the dispute and enforced in accordance with the domestic law of the Contracting Party concerned.

Article 9.

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 a regulation, 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 regulation shall, to the extent that it is more favourable, prevail over the present Agreement.

Article 10.

This Agreement shall apply to all investments made from January 1st 1965 by investors from one of the Contracting Parties in the territory of the other Contracting Party in accordance with the respective legal provisions.

Article 11.

Representatives of the Contracting Parties shall, whenever necessary, hold consultations on any matter affecting the implementation of this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a place and at a time to be agreed upon through diplomatic channels.

Article 12.

1 — This Agreement shall enter into force on the date on which both Contracting Parties have notified each other in writing that their respective internal legal procedures have been fulfilled, and shall remain in force for a period of fifteen years.

2 — If twelve months before the date of expiration of the fifteen-years period neither of the Contracting Parties makes a written notification to the other Contracting Party of its decision to terminate this Agreement, it shall be considered automatically renewed in the same terms and for successive periods of five years.

3 — In case this Agreement is terminated, the provisions of articles 1 to 11 shall remain in force for a further period of ten years with regard to investments made before the termination of this Agreement becomes effective.

Done in Lisbon on 27 of May 1993 in Portuguese, Bulgarian and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of the Portuguese Republic:

For the Govenmnent of Republic of Bulgaria

With reference to the Agreement between the Government of the Portuguese Republic and the Government of the Republic of Bulgaria for the Promotion and Mutual Protection of Investments signed in Lisbon on the 27 of May, 1993 the undersigned plenipotentiary have also agreed on the following interpretative provisions, which constitute an integral part of the said Agreement:

1—. With reference to article 2 of this Agreement

The provisions of article 2 of this Agreement shall also be applicable when investors of one of the Contracting Parties are already established in the territory of the other Contracting Party and wish to extend their activities or to carry out activities in other sectors.

2—. With reference to article 3 of this Agreement

Such investments shall be considered as new ones and, to that extent, shall be made in accordance with the rules that regulate the admission of investments, according to article 2 of this Agreement.

The Contracting Parties consider that provisions of article 3 of this Agreement are not in prejudice of the right of either Contracting Party to apply the pertinent provisions of their national legislation on taxes, if such legislation makes a distinction between tax-payers whose situation is not identical namely with regard to their place of residence or the place where the capital is invested.

Done in duplicate in Sofia on 30 March 1999 in Portuguese, Bulgarian and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of the Portuguese Republic:

For the Govenmnent of Republic of Bulgaria