AGREEMENT BETWEEN THE GOVERNMENT OF MOROCCO AND THE GOVERNMENT OF THE REPUBLIC OF BULGARIA CONCERNING MUTUAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

The Government of the Kingdom of Morocco and the Government of the Republic of Bulgaria dénornmés hereinafter referred to as the Contracting Parties;

Desiring to strengthen economic cooperation through the creation of favourable conditions for investment by investisscurs of one of the Contracting Parties in the territory of the other Contracting Party;

Whereas the beneficial influence that may exercise such an agreement with a view to improving the business contacts and to enhance confidence in the field of investment;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means any financial assets, right of every kind in any companies or firms in any sector of the economy or inter alia:

a) the right of ownership of the movable and immovable property as well as any other rights in rem such as mortgages, pledge, security interests, usufructs and similar rights;

b) shares and other forms of participation in companies;

c) claims and rights to any performance having an economic value;

d) copyrights, industrial property rights, such as trademarks, patents, licences, modéles and industrial designs, technical processes, trade names, know-how and goodwill;

e) the concessions under public law for the exploration and exploitation of natural resources.

Any alteration of the form in which assets and capital invested or reinvested shall not affect their character as "investment" within the meaning of this Agreement.

Such investments shall be carried out in accordance with the laws and regulations of the Contracting Party in whose territory they are undertaken.

2. The term "investor" means:

a) in the case of the Kingdom of Morocco, any natural person having Moroccan nationality under the legislation of the Kingdom of Morocco and making an investment in the territory of the Republic of Bulgaria:

b) in respect of the Republic of Bulgaria, any natural person having the citizenship of the Republic of Bulgaria, in accordance with the laws and regulations in force in the Republic of Bulgaria and making an investment in the territory of the Kingdom of Morocco;

c) a company with its head office in the territory of the Kingdom of Morocco or the Republic of Bulgaria and incorporated under Moroccan legislation or Bulgarian respectively and making an investment in the territory of the other Contracting Party.

3. The term "returns" shall mean the proceeds of an investment and in particular, though not exclusively profits, interest, dividends, royalties.

4. The term "territory" means:

a) for the Kingdom of Morocco in the territory of the Kingdom of Morocco including any maritime area situated beyond the territorial waters of the Kingdom of Morocco and which has been or might be subsequently designated by the legislation of the Kingdom of Morocco, in accordance with international law as an area within which the rights of the Kingdom of Morocco concerning the marine seabed or the subsoil and natural resources may be exercised.

b) for the Republic of Bulgaria, the territory under its sovereignty, including the territorial sea, as well as the continental shelf and the exclusive economic zone over which the Republic of Bulgaria exercises, in accordance with international law, sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage investments of investors of the other Contracting Party in its territory and admit such investments in accordance with its legislation.

2. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall enjoy from the part of this latter of fair and equitable treatment and, subject to the measures strictly necessary for the maintenance of public order, full protection and full and security on the territory of other Contracting Party. Each Contracting Party undertakes to ensure that the management, maintenance, use, enjoyment or disposal within its territory of the investments of investors of the other Contracting Party are not barriers by unjustified or discriminatory measures.

3. The returns from investment leut and in case of reinvestment in accordance with the legislation of one Contracting Party shall enjoy the same protection as the original investment.

Article 3. Treatment of Investments

1. Neither of the Contracting Parties shall grant within its territory investments of investors of the other Contracting Party a treatment no less favourable than that which it accords to its own investments of investors in accordance with its laws and regulations, or to investments of investors of any third State, whichever is more favourable treatment.

2. Neither of the Contracting Parties shall grant in its territory by investors of the other Contracting Party, in respect of activities related to their investments, to treatment less favourable than that which it accords to its own investors investors or of any third State, whichever is more favourable treatment.

3. However, the treatment referred to in paragraphs 1 and 2 of this article does not extend to the privileges which either Contracting Party shall accord to investors of a third State by virtue of its participation in an economic union or association, a customs union or common market, a free trade area, a regional economic organization or similar international agreement or its commitments under the terms of an agreement for the avoidance of double taxation or any other arrangement relating to taxation.

Article 4. Expropriation - Compensation

Nationalisation, expropriation or any other measure having the same effect or character which may be taken by the authorities of one of the Contracting Parties against investments made by investors of the other Party shall be prohibited. Contractor shall not be discriminatory or motivated by reasons other than public interest and shall be taken in accordance with the law in force. The Contracting Party which has taken such measures shall, without undue delay, pay the person entitled just and fair compensation. The amount of the compensation shall correspond to the market value of the investment concerned on the day before the measures are taken or officially made public. Arrangements for the determination and payment of the compensation shall be made promptly and without undue delay. In the event of late payment, the compensation shall bear interest at the LIBOR rate of the currency of the investment made from the date on which it is due. The compensation will be paid to investors in convertible and transferable currency in accordance with the regulations in force.

Article 5. Compensation In the Event of Force Majeure

Investors of each Contracting Party whose investments suffer losses as a result of war or other armed conflicts, national emergencies, disturbances or riots occurring in the territory of the other Contracting Party shall be accorded by the latter Party non-discriminatory treatment at least equal to that accorded to its own investors or to investors of any third State in respect of restitution, indemnification, compensation or other relief, whichever is the more favourable.

Article 6. Transfers

1. Each Contracting Party shall, in accordance with the foreign exchange regulations in force, to investors of the other Contracting Party, after the fulfilment of tax obligations, the free transfer, in a freely convertible currency and without undue delay, of liquid assets relating to these investments and in particular:

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

b) Profits, dividends, interests or other income from investments;

c) Of funds in repayment of loans related to an investment;

d) Fees;

e) The proceeds from a total or partial sale or liquidation of the investment;

f) The compensation pursuant to Articles 4 and 5;

g) Wages and other remuneration accruing to nationals of one Contracting Party who have been authorised to work in the territory of the other Contracting Party in connection with an investment.

2. The transfers referred to in paragraph 1 shall be made at the rate of exchange applicable on the date of transfer.

3. The guarantees provided for in paragraphs 1 and 2 shall be at least equal to those accorded to investors of any third State which are in similar situations.

Article 7. Subrogation

1. Where one of the Contracting Parties, by virtue of a guarantee covering non-commercial risks of investments made in the territory of the other Contracting Party, pays compensation to one of its investors, the other Contracting Party shall recognise the subrogation of the insurer in the rights, obligations and actions of the investor compensated.

2. In accordance with the guarantee given to the Investment, the insurer concerned shall be entitled to claim all the rights that the investor might exercise if the insurer had not been subrogated.

3. Any dispute between one Contracting Party and the insurer to an investment of the other Contracting Party shall be settled in accordance with the provisions of Article 10 of this Agreement,

Article 8. Other Obligations

1. Where a matter relating to investment is governed by this Agreement and simultaneously by the laws or regulations of one of the Contracting Parties, or under existing international conventions or undertaken by the parties in the future, investors of the other Contracting Party may avail itself of the provisions that are most favourable.

2. Investors of one Contracting Party may conclude with the other Contracting Party of the specific commitments which cannot be contrary to this Agreement. Investments made under such specific commitments are, moreover, governed by this Agreement.

Article 9. Settlement of Disputes between the Contracting Parties

1. Disputes concerning the interpretation or implementation of this agreement should, as far as possible, be settled in an amicable manner through consultations between the two Contracting Parties through diplomatic channels.

2. If these disputes cannot be settled amicably within a period of six months from the date on which either of the Contracting Parties notifies in writing to the other contracting party, they will be submitted to an arbitral tribunal, at the request of one of the Contracting Parties.

3. The Tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator and the two arbitrators shall appoint a third arbitrator who is a national of a third State as Chairman of the Tribunal. The arbitrators shall be appointed within three months and the Chairman within five months from the date on which a Contracting Party has informed the other Contracting Party of its intention to submit the dispute to an arbitration tribunal.

4. If the time limits laid down in paragraph 3 have not been observed, the President of the International Court of Justice shall

be invited to make the necessary appointments. If the President of the International Court of Justice is a national of one of the Contracting Parties or is otherwise prevented from holding office, the Vice-President or, if he is prevented from holding office, the senior member of the International Court of Justice who is not a national of any of the Contracting Parties may be invited, under the same conditions, to make such appointments.

5. The tribunal shall determine its own rules of procedure. It shall rule on the basis of the provisions of this Agreement and the rules and principles of International Law recognized.

6. The tribunal shall reach its decisions by a majority of the votes; they shall be final and binding on the Contracting Parties.

7. Each Contracting Party shall bear the costs of its own arbitrator and its representation in the arbitration proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

Article 10. Settlement of Disputes Relating to Investments

1. If an investment disputes arising between an investor and a Contracting Party of the other Contracting Party as a result of the failure to comply with the obligations arising from this Agreement, they shall, as far as possible, be settled amicably through consultations and negotiations between the parties to the dispute.

2. In the absence of rules to direct arrangement by mutual agreement between the parties to the dispute within six months from the date of notification in writing, the dispute shall be submitted at the request of the investor concerned:

a) Either to national jurisdiction of the Contracting Party involved in the dispute,

b) In the case of disputes with regard to articles 4, 5, 6, 7 and 8 for arbitration to the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington, on 18 March 1965, if both Contracting Parties are members thereof. Other disputes shall be submitted to the procedure with the consent of both parties.

To this end, each Contracting Party gives its consent irrevocable that any investment dispute may be submitted to the arbitration procedure.

3. Neither of the Contracting Party, Party to the dispute, can raise objection, at any stage of the arbitration proceedings or of the execution of an arbitral award, on account of the fact that the investor, opposing party in the dispute has received an indemnity covering the whole or part of its losses by virtue of an insurance policy.

4. The arbitral tribunal shall decide on the basis of the national law of the Contracting Party, Party to the dispute, in the territory of which the investment is located, including the rules relating to conflicts of law, the provisions of this Agreement, the terms of the specific agreement which would be reached on the investment as well as the Principles of International Law.

5. The arbitral awards shall be final and binding on the parties to the dispute. each Contracting Party undertakes to execute the award according to its national law.

Article 11. Implementation

This agreement covers also with regard to its future currency, the investments made prior to its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter. However, this Agreement shall not apply to disputes that may arise before its entry into force.

Article 12. Entry Into Force and Period of Validity

1. This Agreement shall enter into force thirty days after the date on which the contracting parties have notified each other of the completion of the constitutional procedures required in their respective countries. It shall remain in force for a period of ten years. Unless one of the Contracting Parties denounces it at least six months before the expiry of the initial period of validity whenever it shall be automatically renewed for a further period of ten years, each Contracting Party reserves the right to terminate the agreement by a notification made at least six months before the date of expiry of the current.

2. Investments made prior to the termination of this Agreement shall continue to apply for a period of ten years from the date of its termination.

In WITNESS WHEREOF the undersigned, duly authorized thereto by representatives, their respective Governments, have signed this Agreement.

Done at Sofia on 22 May 1996, each in two originals in the Arabic, Bulgarian and English languages, all texts being equally authentic. In case of conflict the English text shall prevail.

FOR THE GOVERNMENT OF THE KINGDOM OF MOROCCO

FOR THE GOVERNMENT OF THE REPUBLIC OF BULGARIA