# AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CROATIA AND THE GOVERNMENT OF THE KINGDOM OF SWEDEN ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of Croatia and the Government of the Kingdom of Sweden (hereinafter referred to as the "Contracting Parties");

Desiring to intensify economic cooperation to the mutual benefit of both countries and to maintain fair and equitable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the promotion and reciprocal protection of such investments favour the expansion of the economic relations between the two Contracting Parties and stimulate investment initiatives;

Having resolved to conclude the Agreement on the promotion and reciprocal protection of investments;

Have agreed as follows:

## ARTICLE 1
## DEFINITIONS

For the purposes of the Agreement:

1. The term "investment" means every kind of asset established or acquired by investors of one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations and shall include in particular, though not exclusively:

a) movable and immovable property, including property under a leasing agreement, as well as any other rights in rem such as mortgages, liens, pledges, usufructs and similar rights;

b) stock, shares, debentures and other forms of participation in a company or an enterprise;

c) claims to money or to any performance having economic value, including loans;

d) intellectual property rights, technical processes, trade names, know-how, goodwill and other similar rights;

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

Any change of the form in which an asset is invested or reinvested shall not affect its character as an investment.

2. The term "investor" means in respect of a Contracting Party:

a) any natural person who is a national of that Contracting Party in accordance with its law;

b) any legal person or other organisation organized in accordance with the law applicable in that Contracting Party;

c) any legal person not organized under the law of that Contracting Party but controlled by an investor as defined under (a) or (b); provided that such person makes an investment in the territory of the other Contracting Party.

3. The term "returns" means income deriving from an investment and includes, in particular though not exclusively, profits, dividends, interests, capital gains, royalties, patent fees, licence fees, and other fees. Reinvested returns shall enjoy the same treatment as the original investment.

4. The term "territory" means the territory of the Republic of Croatia or the territory of the Kingdom of Sweden as well as those maritime areas adjacent to the outer limit of the territorial sea including the seabed and subsoil over which the Republic of Croatia or the Kingdom of Sweden exercises, in accordance with international law, sovereign rights or jurisdiction.

## ARTICLE 2
## PROMOTION AND ADMISSION OF INVESTMENTS

1. Each Contracting Party shall, subject to its general policy in the field of foreign investment, promote in its territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its legislation.

2. In order to encourage mutual investment flows, each Contracting Party shall endeavour to inform the other Contracting Party, at the request of either Contracting Party, on the investment opportunities in its territory.

3. Subject to the laws and regulations relating to the entry and sojourn of aliens, individuals working for an investor of one Contracting Party, as well as members of their household, shall be permitted to enter into, remain on and leave the territory of the other Contracting Party for the purpose of carrying out activities associated with investments in the territory of the latter Contracting Party.

## ARTICLE 3
## PROTECTION OF INVESTMENTS

1. Each Contracting Party shall extend in its territory full protection and security to investments of investors of the other Contracting Party. Neither Contracting Party shall impair, by arbitrary, unreasonable or discriminatory measures, the development, management, maintenance, use, enjoyment, expansion, sale and if it is the case, the liquidation of such investments. Each Contracting Party shall observe any other obligation it may have entered into with regard to specific investments of investors of the other Contracting Party.

2. Investments of investors of either Contracting Party in the territory of the other Contracting Party shall be accorded fair acid equitable treatment in accordance with international law and the provisions of this Agreement.

3. Neither Contracting Party shall in its territory impose mandatory measures on investments by investors of the other Contracting Party concerning the purchase of materials, means of production, operation, transport, marketing of its products or similar orders having unreasonable or discriminatory effects.

4. Returns yielded from an investment shall be given the same treatment and protection as an investment.

5. Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, procedures and administrative rulings and judicial decisions of general application as well as international agreements which may affect the investments of investors of one Contracting Party in the territory of the other Contracting Party.

6. Each Contracting Party shall provide effective means of asserting claims and enforcing rights with respect to investments covered by this Agreement.

## ARTICLE 4
## NATIONAL TREATMENT AND MOST FAVOURED NATION TREATMENT

1. Neither Contracting Party shall accord in its territory to investments of investors of the other Contracting Party a treatment less favourable than that which it accords to investments of its own investors, or investments of investors of any third State, whichever is more favourable to the investors concerned.

2. Neither Contracting Party shall accord in its territory to the investors of the other Contracting Party, as regards management, maintenance, enjoyment, use or disposal of their investment, a treatment which is 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 concerned.

3. The provisions of paragraph 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:

a) any existing or future customs union or economic union, free trade area or similar international agreement;

b) any international agreement or arrangement or domestic legislation, completely or partially related to taxation.

## ARTICLE 5
## EXPROPRIATION

1. A Contracting Party shall not expropriate or nationalise, directly or indirectly, an investment in its territory of an investor of the other Contracting Party or take any measure or measures having equivalent effect (hereinafter referred to as "expropriation") except:

a) for a purpose which is in the public interest;

b) on a non-discriminatory basis;

c) in accordance with due process of law; and

d) accompanied by payment of prompt, adequate and effective compensation.

2. Compensation shall be paid without delay, be fully realisable and freely transferable in a convertible currency.

3. Such compensation shall amount to the fair market value of the expropriated investment at the time immediately before the expropriation was taken or became publicly known, whichever is earlier.

4. Such fair market value shall be expressed in a freely convertible currency on the basis of the market rate of exchange existing for that currency at the moment referred to in paragraph 3 of this Article. Compensation shall also include interest at a commercial rate established on a market basis for the currency in question from the date of expropriation until the date of actual payment.

5. The investor, whose investments are expropriated, shall have the right to prompt review of its case by a judicial or other competent authority of that Contracting Party, including the valuation of its investments and the payment of compensation in accordance with the principles set out in this Article.

## ARTICLE 6
## COMPENSATION FOR DAMAGE OR LOSS

1. When investments made by investors of either Contracting Party suffer loss or damage owing to war or other armed conflict, civil disturbances, revolution, riot or similar events in the territory of the latter Contracting Party, they shall be accorded by the latter Contracting Party, treatment, as regards restitution, indemnification, compensation or any other settlement, not less favourable than the treatment the latter Contracting Party accords to its own investors or to investors of any third State, whichever is most favourable to the investors concerned.

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 damage or loss in the territory of the other Contracting Party resulting from:

a) requisitioning of their property or part thereof by its forces or authorities;

b) destruction of their property or part thereof by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation;

shall be accorded a prompt restitution, and where applicable prompt, adequate and effective compensation for damage or loss sustained during the period of requisitioning or as a result of destruction of their property. Resulting payments shall be made in freely convertible currency without delay.

3. The investor, whose investments suffer damage or loss in accordance with paragraph 2 of this Article, shall have the right to prompt review of its case by a judicial or other competent authority of that Contracting Party, including the valuation of its investments and the payment of compensation in accordance with the principles set out in paragraph 2 of this Article.

## ARTICLE 7
## TRANSFERS

1. Each Contracting Party shall ensure that all payments relating to an investment in its territory of an investor of the other Contracting Party may be freely transferred into and out of its territory without delay. Such transfers shall include, in particular, though not exclusively:

a) the initial capital and additional amounts to maintain or increase an investment;

b) returns;

c) the amounts required for payment of expenses related to the operation of the investment;

d) funds in repayment of loans;

e) proceeds from the sale or liquidation of all or any part of an investment;

f) payments of compensation under Article 5 and 6 of this Agreement;

g) payments arising out of the settlement of an investment dispute;

h) earnings and other remuneration of personnel engaged from abroad in connection with an investment.

2. Transfers shall be made in a freely convertible currency at the spot market rate of exchange applicable on the day of transfer for the currency to be transferred.

3. In the absence of a market for foreign exchange, the rate to be used will be the most recent rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is more favourable to the investor.

## ARTICLE 8
## SUBROGATION

If a Contracting Party or its designated agency makes a payment under an indemnity, guarantee or contract of insurance given in respect of an investment made by its investor in

the territory of the other Contracting Party, the latter Contracting Party shall recognise 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, without prejudice to the rights of the former Contracting Party under Article 11.

## ARTICLE 9
## APPLICATION OF OTHER LEGAL PROVISIONS

If the provisions of law of either Contracting Party or international obligations existing at present or established thereafter between the Contracting Parties in addition to the present Agreement, contain a rule, 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 rule shall, to the extent that it is more favourable, prevail over the present Agreement.

## ARTICLE 10
## SETTLEMENT OF DISPUTES BETWEEN A CONTRACTING PARTY AND AN INVESTOR OF THE OTHER CONTRACTING PARTY

1. Any dispute concerning an investment between an investor of one Contracting Party and the other Contracting Party shall, if possible, be settled amicably.

2. If any such dispute cannot be settled within six months following the date on which the dispute has been raised by the investor through written notification to the Contracting Party, each Contracting Party hereby consents to the submission of the dispute, at the investor's choice, for resolution by international arbitration to one of the following fora:

i) the International Centre for Settlement of Investment Disputes (ICSID) for settlement by arbitration under the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States provided both Contracting Parties are parties to the said Convention; or

ii) the Additional Facility of the Centre, if the Centre is not available under the Convention; or

iii) an ad hoc tribunal set up under Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The appointing authority under the said rules shall be the Secretary General of ICSID; or

iv) by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC).

If the parties to such a dispute have different opinions as to whether conciliation or arbitration is the more appropriate method of settlement, the investor shall have the right to choose.

3. For the purpose of this Article and Article 25(2)(b) of the said Washington Convention, any legal person which is constituted in accordance with the legislation of one Contracting Party

and which, before a dispute arises, was controlled by an investor of the other Contracting Party, shall be treated as a national of the other Contracting Party.

4. Any arbitration under paragraph 2 ii) - iv) of this Article shall, at the request of either party to the dispute, be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 (the New York Convention).

5. The consent given by each Contracting Party in paragraph (2) and the submission of the dispute by an investor under the said paragraph shall constitute the written consent and written agreement of the parties to the dispute to its submission for settlement for the purposes of Chapter II of the Washington Convention (Jurisdiction of the Centre) and for the purpose of the Additional Facility Rules, Article 1 of the UNCITRAL Arbitration Rules, the Rules of Arbitration of the ICC and Article II of the New York Convention.

6. In any proceeding involving an investment dispute, a Contracting Party shall not assert, as a defense, counterclaim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received pursuant to an insurance or guarantee contract, but the Contracting Party may require evidence that the compensating party agrees to that the investor exercises the right to claim compensation.

7. Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out without delay the provisions of any such award and provide in its territory for the enforcement of such award.

## ARTICLE 11
## SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled as far as possible by negotiations.

2. If a dispute according to paragraph 1 of this Article cannot be settled within six (6) months, it shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal.

3. Such arbitral tribunal shall be constituted on an ad hoc basis as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third State as their chairman to be appointed by the two Contracting Parties. Such arbitrators shall be appointed within two (2) months from the date one Contracting Party has informed the other Contracting Party, of its intention to submit the dispute to an arbitral tribunal and the chairman shall be appointed within two (2) months following the appointment of the two arbitrators.

4. If the periods specified in paragraph 3 of this Article are not observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-President or in case of his inability the member of the International Court of Justice next in seniority should be invited under the same conditions to make the necessary appointments.

5. The tribunal shall establish its own rules of procedure.

6. The arbitral tribunal shall reach its decision on the basis of the present Agreement and applicable rules of international law. It shall reach its decision by a majority of votes; the decision shall be final and binding.

7. Each Contracting Party shall bear the costs of its own member and of its legal representation in the arbitration proceedings. The costs of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The tribunal may, however, in its award determine another distribution of costs.

## ARTICLE 12
## APPLICATION OF THE AGREEMENT

This Agreement shall apply to investments made prior to or after the entry into force of this Agreement, but shall not apply to any investment dispute that may have arisen or any claim, which was settled before its entry into force.

## ARTICLE 13
## ENTRY INTO FORCE

The Contracting Parties shall notify each other when the constitutional requirements for entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the first day of the second month following the date of receipt of the last notification.

## ARTICLE 14
## DURATION AND DENUNCIATION

1. This Agreement shall remain in force for a period of twenty (20) years. Thereafter it shall remain in force until the expiration of twelve months from the date that either Contracting Party in writing notifies the other Contracting Party of its decision to terminate this Agreement.

2. In respect of investments made prior to the date when the notice of denunciation of this Agreement becomes effective, the provisions of Articles 1-12 of this Agreement shall continue to be effective for a period of twenty (20) years from the date of denunciation of this Agreement.

IN WITNESS WHEREOF, the undersigned representatives, duly authorised thereto, have signed the present Agreement.

DONE at Zagreb, on the 23rd November 2000 in two originals, each in the Croatian, Swedish and English languages, all texts being equally authentic. The text in the English language shall prevail in case of difference of interpretation.

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| FOR THE GOVERNMENT OF<br>THE REPUBLIC OF CROATIA | FOR THE GOVERNMENT OF<br>THE KINGDOM OF SWEDEN |