A G R E E M E N T

BETWEEN

BOSNIA AND HERZEGOVINA

AND

ROMANIA

ON

THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

Bosnia and Herzegovina and Romania, hereinafter referred to as the "Contracting Parties",

Desiring to extend and intensify the economic co-operation between the two States on the basis of equality and mutual benefit;

Intending to create and maintain favourable conditions for greater investment by investors of one Contracting Party in the territory of the other Contracting Party;

Recognising that the promotion and reciprocal protection of such investments under this Agreement will be conducive to the stimulation of business initiative and will increase economic prosperity of both States;

Have agreed as follows:

Article 1
Definitions

For the purpose of this Agreement:

1. The term "investment" shall mean every kind of asset invested for the purpose of economic benefit or other business purpose by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with 1aw and regulations of the latter and in particular, though not exclusively, shall include:

    a) movable and immovable property as well as any other rights in rem such as mortgages, liens or pledges and another similar rights;
    b) shares, stocks and any other form of participation in companies;
    c) claims to money or to any performance having an economic value;
    d) intellectual property rights such as copyrights, patents, industrial designs, technical processes, as well as trademarks, goodwill and know-how;
    e) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract and exploit natural resources.

    Any subsequent change in the form in which assets are invested or reinvested shall not affect their character as investments provided that such change is in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

2. The term “investor” shall mean any natural or legal person of one Contracting Party who invests in the territory of the other Contracting Party.

    a) In respect of Bosnia and Herzegovina:

    (i) the term “natural person” shall mean natural persons deriving their status as Bosnia and Herzegovina citizens from the law in force in Bosnia and Herzegovina if they have permanent residence or main place of business in Bosnia and Herzegovina;
    (ii) the term “legal person” shall mean legal persons established in accordance with the laws in force in Bosnia and Herzegovina, which have their registered seat, central management or main place of business in the territory of Bosnia and Herzegovina.

    b) In respect of Romania:

    (i) the term “natural person” shall mean any natural person having the citizenship of Romania in accordance with its laws;
    (ii) the term “legal person” shall mean any entity such a company, organisation or association incorporated or constituted under the law in force in Romania and having its seat in the territory of Romania.

3. The term "return" shall mean an amount yielded by an investment and in particular, though not exclusively, includes profits, interest, dividends, capital gains, royalties, licence fees and other fees.

4. The term “territory" shall mean:

a) with respect to Bosnia and Herzegovina: all land territory of Bosnia and Herzegovina, its territorial sea, bed and subsoil and air space above, including any maritime area situated beyond the territorial sea of Bosnia and Herzegovina which has been or might in the future be designated under the law of Bosnia and Herzegovina in accordance with international law as an area within Bosnia and Herzegovina may exercise rights with regard to the seabed and subsoil and the natural resources;
b) with respect to Romania: the territory of Romania, including its territorial sea and the airspace above its territory and its territorial sea over which Romania exercises its sovereignty, as well as the contiguous zone, continental shelf and exclusive economic zones over which exercises its jurisdiction, respectively sovereign rights, in accordance with its legislation and international law, regarding the exploration and exploitation of natural, biological and mineral resources existing in the sea waters, the seabed and the subsoil of these waters.

Article 2
Promotion and Protection of Investments

1. Either Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to invest capital in its territory and, within the framework of its laws and regulations, shall admit such investments.

2. Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

Article 3
National Treatment and Most-Favoured-Nation Provisions

1. Each Contracting Party shall in its territory accord to investments and returns of investors of the other Contracting Party treatment which in any case shall not be less favourable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State, whichever is more favourable to the investors concerned.

2. Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments to treatment 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 paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

   a) any existing or future trade area, customs union, economic union, regional economic organisation or similar international agreement to which the Contracting Party is or may become a party;

b) any agreement on avoidance of double taxation or any other arrangements relating wholly or mainly to taxation issues.

Article 4
Compensation for Nationalisation and Expropriation

1. Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as “expropriation”) in the territory of the other Contracting Party except for a public purpose and under due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation.

2. Such compensation shall amount to the market value of the investments affected immediately, before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier. The compensation shall include interest at a normal commercial rate until the date of payment and shall be paid and made transferable without delay, to the country designated by the claimants concerned and in the currency of the country of which the claimants are natural or legal persons or in any freely convertible currency accepted by the claimants.

3. The affected investors of either Contracting Party 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, concerning the legality of the expropriation, its process and the valuation of the investment in accordance with the principles set out in paragraph 1 of this Article.

Article 5
Compensation for Losses

Investors of either Contracting Party who suffer losses including damages in respect of their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which that Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable to the investors concerned.

Article 6
Repatriation of Investment

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

   a) capital and additional amounts necessary for the maintenance and development of the investment;
   b) returns from the investment;

c) funds in repayment of loans related to an investment:
d) proceeds from the total or partial sale or liquidation of an investment;
e) any compensation or other payment referred to in Articles 4 and 5 of this Agreement;
f) payments arising out of the settlement of an investment dispute referring in Articles 8 and 10 of this Agreement;
g) earnings and other remuneration of citizens engaged from abroad in connection with the investment.

2. Transfers shall be effected without any restriction and without undue delay in a freely convertible currency at the prevailing market rate for current transaction applicable on the date of transfer.

3. Transfers shall be considered to have been made "without undue delay" in the sense of paragraph 2 of this Article when they have been made within the period normally necessary for the completion of the transfers. Such period shall under no circumstances exceed three months.

4. The Contracting Parties undertake to accord to such transfers a treatment no less favourable than that accorded to transfers originating from investments made by investors of any third State.

Article 7
Subrogation

1. If a Contracting Party or its designated agency makes a legal payment to any of its investors under a guarantee or a contract of insurance against non-commercial risks given in respect of an investment, the other Contracting Party shall recognise, notwithstanding its rights under the Article 10 of this Agreement, the validity of the subrogation in favour of the former Contracting Party or its agency to any right or title held by the investor.

2. The Contracting Party or its agency that is subrogated in the rights of an investor shall be, in all circumstances, entitled to the same rights and the same treatment as those of the indemnified investor, payments due pursuant to those rights.

3. In the case of subrogation as defined in paragraph 1 of this Article, the investor shall not sue or pursue a claim unless authorised to do so by the Contracting Party or its agency.

Article 8
Settlement of Disputes between one Contracting Party and an Investor of the other Contracting Party

1. Any dispute which may arise between one Contracting Party and an investor of the other Contracting Party in connection with an investment on the territory of that other Contracting Party shall be settled amicably through negotiations.

2. If such a dispute can not be thus settled within a period of six months from the date of request for settlement, the investor concerned may submit the dispute either to:

a) the competent court or administrative tribunal of the Contracting Party in the territory of which the investment has been made; or
b) ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or
c) the International Centre for Settlement of Investment disputes (hereinafter referred to as "the Centre") through conciliation or arbitration established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature in Washington D.C. on 18 March 1965 (hereinafter referred to as “the Convention"), in the event both Contracting Parties shall have become a party to the Convention.

3. The Contracting Party which is a party to the dispute shall, at no time whatsoever during the procedures involving investment disputes, assert as a defence its immunity, or the fact that the investor has received compensation under an insurance contract, covering the whole or part of the incurred damage or loss.

4. Neither Contracting Party shall pursue through the diplomatic channels any dispute referred to the Centre unless:

a) the Secretary-General of the Centre, or a conciliation commission or an arbitral tribunal constituted by it, decides that the dispute is not within the jurisdiction of the Centre; or
b) the other Contracting Party should fail to abide or to comply with any award rendered by an arbitral tribunal.

5. The arbitration award shall be based on:

- the provisions of this Agreement;
- the laws of the Contracting Party in whose territory the investment has been made including the rules relative to conflicts of law; and
- the rules and universally accepted principles of international law.

6. The arbitration award shall be final and binding on both parties to the dispute and shall be executed according to the law of the Contracting Party concerned.

Article 9
Consultations and Exchange of Information

1. Each Contracting Party may propose to the other Contracting Party to enter into consultations concerning all questions related to the application or interpretation of the present Agreement. The other Contracting Party shall make the necessary arrangements for holding these consultations.

2. Upon request by either Contracting Party, information shall be exchanged on the impact that the laws, regulations, decisions, administrative practices or procedures or policies of other Contracting Party may have on investments covered by this Agreement.

Article 10
Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled by consultation and negotiation through diplomatic channels.

2. If a dispute between the Contracting Parties cannot thus be settled within the period of six months from the date of request for settlement, the dispute shall upon the request of either Contracting Party be submitted to an arbitral tribunal of three members.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way. Within the two months from the date of receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a citizen 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 the 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 citizen of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice--President shall he invited to make the necessary appointments. If the Vice-President is a citizen 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 citizen of either Contracting Party shall be invited to make the necessary appointments.

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

6. Each Contracting Party shall bear the cost 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. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties.

7. The tribunal shall determine its own procedure.

Article 11
Application of other Rules

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 rules, 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 rules shall to the extend that they are more favourable prevail over the present Agreement, as long as they last.

Article 12
Entry into Force, Duration and Termination

1. Each Contracting Party shall notify the other in writing of the completion of the internal legal formalities required in its territory for the entry into force of this Agreement. This Agreement shall enter into force on the date of the receiving of the latter of the two notifications.

2. This Agreement shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with paragraph 4 of this Article.

3. The provisions of this Agreement shall apply to future investments made by investors of one Contracting Party in the territory of the other Contracting Party, and also to the investments existing in accordance with the laws of the Contracting Party on the date this Agreement came into force. However, the provisions of this Agreement shall not apply to claims or disputes arising out of events which occurred, or to claims or disputes, which had been settled prior to its entry into force.

4. Either Contracting Party may, by giving one year's written notice to the other Contracting Party, terminate this Agreement at the end of the initial ten year period or at any time thereafter.

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

6. This Agreement may be amended by written Agreement between the Contracting Parties. Any amendment shall enter into force under the same procedure required for the entry into force of the present Agreement.

7. This Agreement shall be applied irrespective of whether or not the Contracting Parties have diplomatic or consular relations.

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

Signed in two originals at Sarajevo this 20 day of February 2001 in Bosnian/Croatian/Serbian, Romanian and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For Bosnia and Herzegovina	For Romania
Mirsad Kurtović	**Mircea Geoama**