A G R E E M E N T

BETWEEN THE STATE OF KUWAIT

AND

ROMANIA

FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The State of Kuwait and Romania (hereinafter collectively referred to as the Contracting States and each referred to as a Contracting State);

desiring to strengthen the economic co-operation existing between the two States and to create favourable conditions for investments by investors of one Contracting State in the territory of the other Contracting State;

recognizing that the encouragement and reciprocal protection under international agreements of such investments will be conducive to the stimulation of business initiative and will increase prosperity in both Contracting States.

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement:

(1) The term "investment" means every kind of asset owned or controlled directly or indirectly by an investor of a Contracting State and invested in the territory of the other Contracting State in accordance with the laws and regulations of that State. Without restricting the generality of the foregoing the term 'investment' shall include:

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

b) shares, stocks and debentures and other forms of direct or indirect participation in companies incorporated in the territory of one Contracting State;

(c) approved loans associated with investments and securities issued by the government of one Contracting State;

(d) reinvested returns, debts which could be converted into investments, other claims to money and other rights referring to services having a financial value;

(e) intellectual and industrial property rights, including, but not limited to, rights with respect to copyrights, trademarks, patents, industrial designs, know-how, trade names, goodwill and other industrial property rights;

(f) any right conferred by law or contract and any licences and permits issued pursuant to law, including rights to prospect, explore, extract, win or utilize natural resources including those in the sea areas under the jurisdiction of one of the Contracting States and rights to manufacture, use and sell products.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment.

(2) The term "investor" means:

(a) in respect of the State of Kuwait: any natural or juridical person including the Government of the State of Kuwait. Natural person means an individual holding a Kuwaiti nationality in accordance with the laws of the State of Kuwait;

(b) in respect of Romania: any Romanian economic unit having legal personality.

(3) The term "juridical person" means:

(a) in respect of the State of Kuwait:

(i) any entity established in accordance with, and recognized as a juridical person by the laws of the State of Kuwait, such as institutions, development funds, enterprises, agencies, cooperatives, partnerships, corporations, authorities, foundations, companies, firms, establishments, organizations and business associations or similar entities irrespective of whether their liabilities are limited or otherwise;

(ii) legal entities established under the law of any State which are, directly or indirectly, owned or controlled by investors of the State of Kuwait having their seat with real economic activities in the territory of the State of Kuwait. An investor according to this subparagraph may be required to submit proof of such ownership or control in order to be recognized by the competent authorities of Romania as an investor of the State of Kuwait.

(b) in respect of Romania:

any economic entity established in Romania in accordance with the Romanian Law.

(4) The term "own" or "control" means ownership or control exercised through subsidiaries or affiliates wherever located.

(5) The term "direct participations" designates the shares owned by an investor of one Contracting State in a company or economic activity situated in the territory of the other Contracting State.

(6) The term "indirect participations" designates the shares owned by a company having its head office in the territory of one of the Contracting States in another company or economic activity also situated in that territory, when the first company is established with participation to capital of an investor of the other Contracting State.

(7) The term "returns" means amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties, management, technical assistance or other fee, irrespective of the form in which the return is paid.

(8) The term "associated activities" includes the organisation, control, operation, maintenance and disposal of juridical persons, branches, agencies, offices, factories or other facilities for the conduct of business, the acquisition, use, protection and disposal of property of all kinds, including intellectual and industrial property rights; and the borrowing of funds, the purchase and issue of equity shares, and the purchase of foreign exchange for imports, in accordance with the laws and regulations of the host State.

ARTICLE 2

Promotion and Protection of Investments

(1) Each Contracting State undertakes to provide and maintain a favourable environment for existing or new investments and reinvested returns of investors of the other Contracting State and shall, in applying its laws and regulations, permit such investments to be established and acquired in its territory. It shall in any case accord such investments fair and equitable treatment.

(2) Neither Contracting State shall in any way impair by arbitrary, unreasonable or discriminatory measures the management, maintenance or use of investments made in its territory by investors of the other Contracting State.

(3) Each Contracting State shall endeavour to take and enforce the necessary measures for granting of appropriate facilities, incentives and other forms of encouragement for investments made by investors of the other Contracting State.

(4) Investors of either Contracting State shall be entitled to apply to the competent authorities in the host State for the appropriate facilities, incentives and other forms of encouragement and the host State shall grant them all assistance, consents, approvals, licences and authorizations to such an extent and on such terms and conditions as shall be determined by the laws and regulations of the host State.

(5) With respect to its tax policies, each Contracting State should strive to accord fairness and equity in the treatment of investments of investors of the other Contracting State.

(6) To attain the objectives of this Agreement, the Contracting States shall encourage and facilitate the formation of appropriate legal entities by investors of either Contracting State to establish, develop and execute investment projects in different economic sectors in accordance with the laws and regulations of the other Contracting State.

(7) Investors of either Contracting State shall be permitted to engage top managerial and technical personnel of their choice regardless of nationality to the extent permitted by the laws of the host State. The Contracting States shall make available all necessary facilities including granting of visas and permits of stay to such managerial and technical personnel and to their families in accordance with the laws and regulations of the two Contracting States.

(8) Once established, the investments shall not be subjected to additional performance requirements in the host State which might hinder thier operation or development.

(9) Each Contracting State recognizes that in order to

maintain a favourable environment for investments in its territory by investors of the other Contracting State, it shall provide effective means of asserting claims and enforcing rights with respect to investment agreements, investment authorizations and properties. Each Contracting State shall not impair the right of the investors of the other Contracting State to have access, either in person or through legal representation, to its courts of justice, administrative tribunals and agencies, and all other bodies exercising adjudicatory authority.

(10) Each Contracting State shall endeavour to maintain conditions of free competition for investments of investors of the other Contracting State.

(11) Each Contracting State shall make public all laws, regulations and directives that pertain to or affect investments in its territory of investors of the other Contracting State.

(12) Each Contracting State shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting State.

ARTICLE 3

Most-Favoured-Nation Treatment

(1) Each Contracting State shall accord investments made in its territory by investors of the other Contracting State treatment not less favourable than that which it accords in like situations to investments of investors of any third State.

(2) Each Contracting State shall accord investors of the other Contracting State, as regards compensation, transfers, management, maintenance, use, acquisition or disposal of their investments or any other activity associated therewith treatment not less favourable than that which it accords to investors of any third State.

ARTICLE 4

Exception

The provisions of this Agreement relating to the granting of treatment not less favourable than that accorded by one Contracting State to the investors of any third State shall not be construed so as to oblige that Contracting State to extend to the investors of the other Contracting State the benefit of any treatment, preference or privilege resulting from :

(a) any existing or future customs union, an economic union, a free trade area, a similar international agreement or other forms of regional or sub-regional cooperation arrangement to which either of the Contracting States is or may become a party; or

(b) any international, regional or sub-regional agreement or other arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

ARTICLE 5

Compensation for Damage or Loss

Investors of one Contracting State whose investments suffered losses owing to war, other armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events, including losses occasioned by requisitioning, in the territory of the other Contracting State, shall receive from the latter Contracting State the necessary compensation which should cover the suffered losses. The amounts concerning this compensation shall be freely transferable.

ARTICLE 6

Sequestration And Confiscation

(1) Investments of investors of either Contracting States shall enjoy full protection and security in the territory of the other Contracting State.

(2) Without restricting the generality of paragraph (1), investments of investors of either Contracting States shall not be subjected to sequestration, confiscation or any similar measures save with due process of law.

ARTICLE 7

Nationalisation or Expropriation

(1) Investments made by investors of one Contracting State in the territory of the other Contracting State shall not be expropriated, nationalised or subjected to other measures having a similar effect unless the following conditions are fulfilled:

(a) the measures are not discriminatory;

(b) the measures are adopted in the public interest and through a legal procedure;

(c) a proper procedure is established to determine the amount and method of payment of compensation,

which should be prompt, adequate and effective.

(2) Such compensation shall be computed and determined in accordance with recognized principles of valuation such as the fair market value of the investment immediately prior to or at the time when the decision for nationalisation or expropriation was announced or became publicly known, whichever is the more favourable. Where the market value cannot be readily ascertained, the compensation shall be determined on equitable principles taking into account, inter alia, the capital invested, appreciation, current returns, goodwill, replacement value and other relevant factors.

Upon the request of the investor concerned, the amount of compensation can be reassessed by a tribunal or other competent body in the host State. The amount of compensation finally determined shall be promptly paid to the investor in freely convertible currencies and allowed to be freely transferred without delay. In the event that payment of compensation is delayed, it shall include interest at current LIBOR rate.

(3) Where a Contracting State nationalises or expropriates the investment of a juridical person which is established or licenced under the law

in force in its territory and in which an investor of the other Contracting State owns shares, stocks, debentures or other rights or interests, it shall ensure that prompt, adequate and effective compensation is received and allowed to be transferred. Such compensation shall be determined and paid in accordance with the provisions of paragraph (2).

ARTICLE 8

Transfers

(1) With respect to investments, each Contracting State shall guarantee to the investors of the other Contracting State the transfer, without delay, out of its territory of:

(a) the investment returns;

(b) the proceeds accruing from the total or partial sale, alienation or liquidation of an investment;

(c) the payments made for the reimbursement of the credits for investments and interest due;

(d) the earnings of nationals of the other Contracting State deriving from their work and service in connection with an investment in its territory;

(e) amounts used for the management of the investment;

(f) funds necessary for the maintenance of the investment; and

(g) compensation referred to in Articles 5 and 7.

(2) The above transfers shall be made in the convertible currency in which the investment has been made or in any other freely convertible currency, if so agreed, at the rate of exchange in force at the date of the transfer.

(3) For the purposes of this Agreement, exchange rates shall be determined in accordance with the official rates agreed upon with the International Monetary Fund or, where such rates do not exist, the official exchange rates for Special Drawing Rights or United States Dollars or any other convertible currency agreed upon by the Contracting States.

ARTICLE 9

Subrogation

If either Contracting State (or its designated Agency) makes payment to one of its investors under an indemnity or a guarantee it has given in respect of an investment or any part thereof invested in the territory of the other Contracting State, the latter Contracting State shall recognize:

(a) The assignment whether under law or pursuant to a legal transaction of any right, claim and obligation from that investor to the first-mentioned Contracting State or its designated Agency and

(b) that the first-mentioned Contracting State (or its designated Agency) is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and shall assume the obligation related to the investment including payment of taxes and fees.

The first-mentioned Contracting State shall accordingly, if it so desires, be entitled to assert any such right or claim to the same extent and subject to the same restrictions as its predecessor in title.

ARTICLE 10

Settlement of Investment Disputes

(1) Any dispute between one Contracting State and an investor of the other Contracting State concerning an investment of that investor in the territory of the former Contracting State shall be settled, as far as possible, by consultations and negotiations between the parties to the dispute.

(2) If the dispute cannot be settled according to the provisions of paragraph (1) within three months from the date of request for settlement, then the dispute shall be submitted for settlement in accordance with the specific dispute - settlement procedures upon which a Contracting State and an investor of the other Contracting State have previously agreed.

(3) If the disputes with regard to the amount of compensation under Article 7 and transfers under Article 8 cannot be settled according to the provisions of paragraphs (1) and (2), the investor concerned may proceed as follows:

(a) he may submit the dispute for settlement by the local courts, or

(b) submit the dispute to the International Centre for the Settlement of Investment Disputes (the Centre) for settlement by conciliation or arbitration according to the procedure provided for in the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965 (the Convention) after exhausting all local remedies which should not extend more than six months running from the date of the first act of judicial procedure for the settlement of the dispute by the competent local court.

(4) Other disputes not referred to in paragraph (3), may be submitted for settlement to the Centre, by agreement of the parties to the disputes, after exhausting local remedies.

(5) In case the Convention is not applicable, then the dispute shall be submitted for settlement by an ad hoc arbitral tribunal. Such arbitral tribunal shall be established as follows:

a) The arbitral tribunal shall be constituted for each individual case. Each party to the dispute shall appoint one arbitrator and these two arbitrators shall nominate a chairman who shall be a national of a third State which has diplomatic relations with both Contracting States. The arbitrators shall be appointed within two months of the receipt of the request for arbitration and the chairman shall be nominated within further two months.

b) If the appointments have not been made within the periods mentioned above, either party to the dispute may invite the Secretary General of the Centre to make the necessary appointments. If the Secretary General is prevented from carrying out the said function or if he is a national of either Contracting State the same procedures under paragraph (4) of Article 11 shall be applied mutatis mutandis.

c) The tribunal shall determine its own procedures. Its decisions shall be reached by a majority of votes. Such decisions shall be final and binding. Each Contracting State shall ensure the recognition and execution of the arbitral award.

d) Each party to the dispute shall bear the costs of its own member of the tribunal and of its representation in the arbitral proceedings; the costs of the chairman and the remaining cost shall be borne in equal parts by both parties to the dispute. The tribunal may, however, in its Award decide on a different proportion of costs to be borne by one of the parties.

(6) The Contracting State which is a party to the dispute shall at no time whatever during the procedures specified in paragraphs (2) and (3) or during the execution of the respective award or judgement assert as a defense:

a) its immunity;

b) the fact that the investor has received compensation under an insurance contract covering the whole or part of the incurred damage or loss.

(7) Neither Contracting State shall pursue through diplomatic channels a dispute submitted to arbitration,

unless the other Contracting State does not abide by and comply with the award rendered by an arbitral tribunal.

ARTICLE 11

Settlement of Disputes between the Contracting States

(1) Any dispute between the Contracting States concerning the interpretation or application of this Agreement shall be settled, as far as possible, through negotiations between the two Contracting States.

(2) If the dispute cannot be so settled within (6) six months after the commencement of the negotiations, it shall, upon the request of either Contracting State, be submitted to an arbitral tribunal in accordance with the provisions of this Article.

(3) The arbitral tribunal shall be constituted in the following way: within two months of the receipt of the request for arbitration, each Contracting State shall appoint one member of the tribunal. The two members shall then select a national of a third State which has diplomatic relations with the two Contracting States who

shall act as Chairman (hereinafter referred to as the Chairman). The Chairman shall be appointed by the Contracting States within three months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3) any arbitrator or the Chairman shall not have been appointed, a request may be made by either Contracting State to the President of the International Court of Justice to make the appointment. If he happens to be a national of either Contracting State or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointment. If the Vice-President also happens to be a national of either Contracting State or 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 State shall be invited to make the necessary appointment.

(5) The arbitral tribunal shall reach its decision on the basis of the provisions of this Agreement and of other similar agreements concluded by the Contracting States as well as on the general principles and rules of international law. The decision shall be reached by a majority of votes. Such decision shall be final and binding.

(6) Each Contracting State shall bear the cost of its own arbitrator and its counsel in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting States unless the arbitral tribunal decides otherwise.

(7) The arbitral tribunal shall determine its own procedure.

ARTICLE 12

Relations between Governments

The provisions of this Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting States.

ARTICLE 13

Preservation Of Rights

(1) Where a matter is governed simultaneously both by this Agreement and by another international agreement to which both Contracting States are parties or general principles of international law, nothing in this Agreement shall prevent either Contracting State or any of its investors who own investments in the territory of the other Contracting State from taking advantage of whichever rules are the most favourable to their cases.

(2) This Agreement shall not supersede, prejudice or otherwise derogate from:

(a) laws, and regulations of either Contracting State,

(b) international legal obligations,

(c) commitments assumed by either Contracting State, including those contained in an investment agreement or investment authorization,

that entitle investments or associated activities of investors of the other Contracting State to treatment more favourable than that accorded by this Agreement in like situations.

ARTICLE 14

Application

This Agreement shall also apply to investments made by investors of either Contracting State in the territory of the other Contracting State prior to the entering into force of this Agreement and accepted in accordance with the respective legislations of either Contracting State.

ARTICLE 15

Entry into Force

This Agreement shall be ratified according to the constitutional procedure of each Contracting State and shall enter into force at the date of exchange of the instruments of ratification.

ARTICLE 16

Duration and Termination

(1) This Agreement shall remain in force for a period of 20 years and shall continue in force thereafter for similar period or periods unless, one year before the expiry of the initial or any subsequent period, either Contracting State notifies the other Contracting State of its intention to terminate the Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting State.

(2) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall continue to be effective for a period of 15 years from the date of termination of the present Agreement.

In witness whereof the undersigned duly authorized thereto have signed this Agreement.

Done in duplicate at KUWAIT this 7TH day of THULQIDA 1411 H corresponding to 21ST day of MAY 1991 in the Arabic, Romanian and English languages, all texts being equally authentic.

In case of divergency, the English text shall prevail.

For the State of Kuwait
NASSER A. AL-ROWDHAN,
MINISTER OF FINANCE

For Romania
FLORIAN BERCEA
MINISTER OF BUDGET

P R O T O C O L

On signing the Agreement between the State of Kuwait and Romania concerning the Reciprocal Promotion and Protection of Investments, the undersigned Plenipotentiaries have, in addition, agreed on the following provisions which should be regarded as an integral part of the said Agreement.

1. With respect to Article 2:

(a) The Contracting States shall within the framework of their national legislations give sympathetic consideration to applications for the entry, sojourn or temporary residence of persons of either Contracting State who wish to enter the territory of the other Contracting State in connection with an investment; the same shall apply to employed persons of either Contracting State who in connection with an investment wish to enter the territory of the other Contracting State and sojourn temporarily in order to work as employees in connection with that investment. Applications for work permits shall also be given sympathetic consideration.

(b) Whenever goods or persons connected with an investment are to be transported, each Contracting State shall neither exclude nor hinder transport enterprises of the other Contracting State and shall issue permits as required to carry out such transport. This shall include the transport of :

(i) goods directly intended for an investment within the meaning of this Agreement or acquired in the territory of either Contracting State or of any third State by or on behalf of an enterprise in which assets within the meaning of this Agreement are invested;

(ii) persons travelling in connection with an investment.

2. With respect to Article 3:

(a) The following shall, in particular, be deemed "treatment less favourable" within the meaning of Article 3: restricting the purchase of intermediate as well as raw or auxiliary materials, of energy or fuel or of means of production or operation of any kind, impeding the marketing of products inside or outside the country, as well as any other measures having similar effects. Measures that have to be taken for reasons of public security and order, public health or morality shall not be deemed "treatment less favourable" within the meaning of Article 3.

(b) If a Contracting State accords in the future the investors of the other Contracting State national treatment under this Article, that Contracting State shall not be obliged to extend to those investors any tax privilege, tax exemption or tax reduction which are available only to its own investors.

3. With respect to Article 7:

The provisions of Article 7 shall also apply to conversion to public ownership, other similar State interventions, take-over and any other such limitations of property right by sovereign measures such as freezing, blocking of assets or destruction of all or part of the investment or other similar measures, which in their consequences will be tantamount to expropriation or nationalisation.

4. With respect to Articles 5, 7 and 8:

(a) the term "without delay" within the meaning of Articles 5, 7 and 8 is deemed to be fulfilled if a repatriation or transfer is made within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the request has been made and the necessary documents were submitted in the proper way to the competent authorities. However, the period may on no account exceed two months.

(b) Returns from the investment, and, in the event of their re-investment, the returns therefrom, shall enjoy the same facilities and protection as the original investment.

5. With respect to Article 8

(a) The transfers referred to in Article 8 means the transfers which shall be made from the foreign currency account of the investors of one Contracting

State in the host State.

(b) When an investor of one Contracting State does not have sufficient foreign currency for the transfers referred to in sub-paragraph (a), the Government of the host State shall provide the required foreign currency for the transfer at least in any of the following cases:

(i) where under its respective legislation, the Government of the host State undertakes to provide the required foreign currency for the transfer of that portion of the investment returns where the investor concerned was allowed to generate income in local currency;

(ii) if the competent authorities of the host State had requested the investor concerned to sell his products in its domestic market in local currency;

(iii) the investor concerned was requested by the Government of the host State to participate in a privatization scheme of its state-owned juridical persons which generate profits only in local currency;

(iv) if the Government of the host State had given a prior specific commitment pursuant to paragraph (12) of Article 2, to the investor concerned with respect to transfers;

(v) the proceeds accruing from the sale, total or partial liquidation of an investment; and

(vi) compensation referred to in Articles 5 and 7.

In witness whereof the undersigned duly authorized thereto have signed this Protocol.

Done in duplicate at KUWAIT this 7TH day of THULQIDA 1411H corresponding to. 21ST day of MAY 1991 in the Arabic, Romanian and English languages, all texts being equally authentic.

In case of divergency, the English text shall prevail.

For the State of Kuwait

MASSER A. AL-ROWDHAN,
MINISTER OF FINANCE

For Romania

FLORIAN BERCEA
MINISTER OF BUDGET