Agreement between the Government of the Republic of Belarus and the Socialist People's Libyan Arab Jamahiriya for the Promotion and Reciprocal Protection of Investments

The Government of the Republic of Belarus and the Socialist People's Libyan Arab Jamahiriya, hereinafter referred to as the «Contracting Parties»,

Desiring to intensify economic cooperation to the mutual benefit of both States,

Intending to create and maintain favourable conditions for investments by the investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and reciprocal protection under this international agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both States,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement the following terms shall mean:

1. «Investor» means with respect to either Contracting Party:

(a) any natural persons having the nationality of either of the Contracting Parties and making investment in the territory of the other Contracting Party;

(b) any legal persons which are constituted or otherwise duly organised in accordance with the laws and regulations of either of the Contracting Parties, having their seat together with real economic activities in the territory of that Contracting Party and making investments in the territory of the other Contracting Party.

2. «Investment» means every kind of asset, which is the property of an investor of one Contracting Party which is invested in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party and in particular, though not exclusively, includes:

(a) movable and immovable property and any other property rights such as mortgages, liens or pledges;

(b) shares in, stocks, debentures and any other form of participation in a legal person;

(c) claims to money or to any performance under contract having an economic value;

(d) intellectual and industrial property rights such as copyrights, patents, utility models, industrial designs or models, trade or service marks, trade names, know-how and goodwill;

(e) concessions under public law, including concessions to search for, extract or exploit natural resources as well as all other rights given by law, by contract or by decision of the authority in accordance with the law.

A change in the form in which assets are invested does not affect their character as investments.

3. «Retums» means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, dividends, royalties and fees.

4. «Laws and regulations» in respect of either Contracting Party means the laws and regulations of the State of the Contracting Party concerned.

5. «Territory» refers to the territory of the State concerned over which that State may exercise sovereign rights or

jurisdiction in accordance with international law or international treaties.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall promote and create favourable conditions for investors of the other Contracting Party to make investments in its territory, and shall admit such investments in accordance with its laws and regulations.

2. Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full legal protection in the territory of the other Contracting Party under this Agreement. 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. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

Article 3. Treatment of Investments

1. Each Contracting Party shall grant in its territory to investors and investments of investors of the other Contracting Party treatment which shall not be less favourable than that which it accords to investors and investments of its own investors or to investors and investments of investors of any third State.

2. For the avoidance of doubt it is confirmed that the treatment provided for in paragraph (1) above shall apply to the provisions of Articles 1 to 11 of this Agreement.

3. Without prejudice to paragraphs 1 and 2 of this Article the treatment referred in this Agreement shall be granted on the basis of reciprocity.

Article 4. Exceptions

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

(a) any existing or future free trade area, customs or economic union or similar international agreement to which either of the Contracting Parties is or may become a party, or

(b) any international agreement or arrangement relating wholly or mainly to taxation.

Article 5. Compensation for Losses

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

2. Without prejudice to paragraph (1) of this Article, investors of one Contracting Party who in any of the situations referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from expropriation of their property by its forces or authorities or destruction of their property 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 restitution or compensation which shall be prompt adequate and effective. Resulting payments shall be freely transferable.

Article 6. Expropriation and Compensation

Investments of investors of either Contracting Party shall not be expropriated, nationalized, requisitioned or subjected to measures having effect equivalent to expropriation (hereinafter referred to as «expropriation») in the territory of the other Contracting Party except for a public purpose on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the genuine value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest calculated on the LIBOR basis until the date of payment shall be made without unreasonable delay, be effectively realizable and be freely transferable. The investor affected 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, of his/its case

and of the valuation of his/its investment in accordance with the principles set out in this paragraph.

Article 7. Free Transfer

1. Each Contracting Party in whose territory investments have been made by. investors of the other Contracting Party shall guarantee those investors, after they have fulfilled all their fiscal obligations, the free transfer of payments relating to these investments, particularly of:

(a) returns as defined in paragraph 3 of the Article 1 of this Agreement;

(b) repayments of loans recognized by the both Contracting Party as investment;

(c) amounts assigned to cover expenses relating to the management of the investment;

(d) additional contributions necessary for the maintenance or development of the investment;

(e) the proceeds of the sale or of the partial or total liquidation of the investment;

(f) compensation under Articles 5 and 6 of this Agreement.

2. Transfers shall be effected without delay in freely convertible currency at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force of the Contracting Party in which territory the investment have been made.

Article 8. Subrogation

Where one Contracting Party has granted any financial guarantee against non-commercial risks in regard to an investment by one of its investors in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party by virtue of the principle of subrogation to the rights of the investor when payment has been made under this guarantee by the first Contracting Party.

Article 9. Disputes between Contracting Parties

1. Disputes between Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.

2. If both Contracting Parties cannot reach an agreement within six months after the beginning of the dispute between themselves, the latter shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a chairman who shall be a national of a third State.

3. If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of latter Contracting Party by the President of the International Court of Justice.

4. If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

5. If, in the cases specified under paragraphs (3) and (4) of this Article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or if he is a national of either Contracting Party, the appointment shall be made by the most senior Judge of the International Court of Justice who is not a national of either Contracting Party. Such appointment shall be made within three months beginning from the date of request for settlement.

6. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. 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 of his/her representation in the arbitral proceedings and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal shall determine its own procedure.

Article 10. Disputes between a Contracting Party and an Investor of the other Contracting Party

1. For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party and without prejudice to Article 9 of this Agreement (Disputes between Contracting Parties), consultations will take place between the parties concerned with a view to solve the case amicably.

2. If these consultations do not result in a solution within six months from the date of request for settlement, the investor may submit the dispute, at his choice, for settlement to:

(a) the competent court of the Contracting Party in which territory the investment has been made; or

(b) an ad hoc arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established as specified in paragraphs 2-6 of Article 9 of this Agreement.

3. Each Contracting Party hereby consents to the submission of an investment dispute to international arbitration. The awards of the arbitral tribunal shall be final and binding on both parties to the dispute.

4. The Contracting Party, which is party to the dispute shall at no time whatsoever during the settlement procedure or the execution of the sentence allege as a defense 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.

5. Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to international arbitration unless the other Contracting Party does not abide by and comply with the award rendered by an arbitral tribunal.

Article 11. More Favourable Provisions

1. 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 extent that they are more favourable prevail over the present Agreement.

2. Investments subjected to special contracts or agreements undertaken by one Contracting Party with respect to the investors of the other Contracting Party shall be governed, notwithstanding the provisions of this Agreement, by the terms of those contracts and agreements insofar as their provisions are more favourable than those provided by this Agreement.

Article 12. Entry Into Force

Each Contracting Party shall notify the other in writing of the completion of its internal procedures required for the entry into force of this Agreement. This Agreement shall enter into force thirty days after the date of the latter of the two notifications.

Article 13. Duration and Termination

This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force for an unlimited period unless denounced in writing by either Contracting Party six months in advance. Provided that in respect of investments made whilst the Agreement is in force, provisions of its Articles 1-11 relating to these investments shall continue in effect with respect to such investments for a period of ten years after the date of termination.

Done in duplicate at Tripoli this first day of November 2000, corresponding to the first day of Harat month of the year 1430 M., in the Russian, Arabic and English languages, each text being equally authentic. In case of any divergence the English text shall prevail.

For the Government of the Republic of Belarus

For the Socialist People's Libyan Arab Jamahiriya