AGREEMENT BETWEEN THE GOVERNMENT OF THE ITALIAN REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF GABON ON THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Italian Republic and the Government of the Gabonese Republic, hereinafter referred to as the "Contracting Parties"

Wishing to create favorable conditions for greater economic cooperation between them and in particular in the case of capital investments by investors of a Contracting Party in the territory of the other Contracting Party and,

Recognizing that mutual encouragement and mutual protection on the basis of international agreements will help to stimulate private initiative and increase prosperity of the two Contracting Parties,

Have agreed as follows:

Article 1. Definitions

Pursuant to this Agreement:

1. The term "investment" means, irrespective of the legal form chosen and the legal reference system, all assets invested, either before or after the entry into force of this Agreement, by a natural or legal person of the Contracting Party, Other Contracting Party, in accordance with the laws and regulations of that Party. In such a general context, the term "investment" means, in particular, but not exclusively:

a) Movable and immovable property, as well as any other "rem" property right, including the right to a third party ownership, as they may be used for the purpose of the investment;

b) Shares, social security contributions or any other form of participation in companies established in the territory of one of the Contracting Parties, bonds and any other credit, as well as government securities and public entities in general;

c) Financial claims or any other right for commitments or benefits of economic value and associated with an investment, in the same way as reinvested earnings, as defined in paragraph 5 of this Article, paragraph 5 of this Article;

d) Copyright, trade marks, brilliant, industrial "design" and other intellectual and industrial property rights, know-how, commercial secrets; Trade names and "good will";

e) Any right of economic nature, as provided by law or contract, any license or concession in accordance with the provisions in force for the exercise of economic activities, including prospecting, cultivation, extraction and exploitation of natural resources.

2. The term "investor" means a natural or legal person of the Contracting Party that has made or has made investments in the territory of the other Contracting Party.

3. The term "natural person" means, for each of the Contracting Parties, a natural person having the nationality of that Party Part, in accordance with the legislation in force.

4. The term "legal person" means, for each of the Contracting Parties, any entity having its seat in the territory of one of the Contracting Parties and recognized in accordance with national laws such as Public bodies, corporations of persons or capital, foundations, associations, regardless of whether their liability is limited or not.

5. The term "income" means the sums obtained or obtained by way of an investment, including, in particular, profits or part of profits, interest, capital gains, dividends, royalties, remuneration for technical assistance and services and other sums due, including reinvested earnings and capital increases.

6. The term "territory" means areas bordered by land borders and "maritime areas". These include marine and submarine areas under the sovereignty of the Contracting Parties or on which they exercise sovereign and judicial rights in accordance with international law.

Article 2. Promotion and Protection of Investment

1. Each Contracting Party shall encourage investors from the other Contracting Party to make investments in its territory and authorize investments in accordance with its legislation.

2. Each Contracting Party shall always ensure fair and equitable treatment of investors of the other Contracting Party. Each Contracting Party shall ensure that the management, maintenance, enjoyment, transformation, termination and liquidation of investments made in its territory by investors of the other Contracting Party, as well as the companies and undertakings in which such investments have been Are not in any way affected by unjustified or discriminatory measures.

Article 3. National Treatment and the Most Favored Nation Clause

1. Each Contracting Party in its territory shall ensure investment and incomes of investors of the other Contracting Party not less favorable than that accorded to investment and income of its nationals or investors of a third State.

2. The treatment reserved for investors' investment activities in each of the Contracting Parties shall not be less favorable than that accorded to similar activities related to the investments of the Contracting Party's investors or those of all third countries.

3. The provisions of paragraphs 1 and 2 of this Article shall not refer to the advantages and privileges that a Contracting Party reserves or reserves to a third country on the basis of its membership of a customs or economic union, a common market, a free trade area, a regional or subregional agreement, a multilateral international economic agreement or agreements concluded to avoid double taxation or to facilitate cross-border trade.

Article 4. Compensation for Damages or Losses Resulting from War Events or Similar Events

Investors of either Contracting Party whose investments, in the territory of the other Contracting Party, have suffered loss or damage due to war or other armed conflict, revolution, national emergency, rebellion, insurrection or In any event, receive treatment which is no less favorable than that accorded by that Contracting Party to its own investors and no less favorable than that accorded by that Contracting Party to Investors from all third countries.

Article 5. Compensation for Nationalization or Expropriation

1. Investments covered by this Agreement will not be subject to any limitation, fixed or indefinite, to the ownership, possession, control and enjoyment rights attached to them, except for legal provisions and pronouncements And orders issued by the competent judicial authorities.

Investors of one of the Contracting Parties shall not be directly or indirectly nationalized, expropriated, seized or subjected to measures having an equivalent effect on the territory of the other Party, except for the purposes of the public interest or for reasons of national interest and against Immediate, complete and effective compensation, provided that such measures are adopted on a non-discriminatory basis and in accordance with the law and legal provisions.

Appropriate compensation will be equivalent to the effective market value immediately before the decision to nationalize or expropriate has been announced or made public and will be determined on the basis of internationally accepted reference indices.

In the event of difficulties in verifying market value, compensation will be determined on the basis of an equitable valuation of the constituent elements and distinctive features of the undertaking, as well as of the components and results of the activities of the undertaking to which it relies. Compensation will include interest expired on the date of payment, calculated at "LIBOR six months" rates and as of the date of nationalization or expropriation. In the absence of an agreement between the investors and the Host Party, the amount of compensation shall be determined in accordance with the dispute settlement procedures referred to in Article 9 of this Agreement. Once it has been established, the compensation will be quickly saluted and authorized for repatriation.

2. The provisions of the first paragraph of this Article shall also apply to the income of an investment as well as, in the case of liquidation, to the benefits of the winding-up allowance.

3. When, after the expropriation, the property in question has not been used, in whole or in part, for the abovementioned purposes, the owners or those who have the cause have the right to purchase the good again at market price.

Article 6. Transfers

1. Each of the Contracting Parties guarantees to investors of the other Party, after their fulfillment of any tax obligation, the transfer abroad, and in each convertible currency and without unjustified delay, the following:

a) The capital and the additional shares of the capital employed to maintain and increase the investments;

b) Net income, dividends, royalties, remuneration for service and technical services, interests and other profits;

c) The sums resulting from the total or partial sale or liquidation of an investment;

d) Funds for the repayment of loans relating to an investment and the payment of the resulting interest;

e) Remuneration and benefits received by nationals of the other Contracting Party on the basis of subordinated employment and services rendered in connection with the execution of an investment made in its territory, to the extent and in accordance with the procedures laid down in its national laws and regulations in force ;

f) The payment of allowances made under Articles 4 and 5 above. Articles 4 and 5 above.

2. In accordance with the provisions of Article 3 of this Agreement, the Contracting Parties undertake to grant the transfers referred to in paragraph 1 of this Article the same treatment as that reserved for transfers resulting from investments made by investors in a third country, If this would prove to be more favorable.

3. The tax obligations referred to in paragraph 1 of this Article shall be deemed to have been fulfilled when the investor has established the procedures provided for by the law of the Contracting Party in the territory of which the investment is made.

Article 7. Subrogation

If a Contracting Party or any of its Organizations has granted an insurance guarantee against non-commercial risks for investments made by its investors in the territory of the other Contracting Party and has made payments on the basis of the delayed guarantee, this Party shall be recognized as having the same credit standing as the insured entrepreneurs. With respect to payments to be made to one of the Contracting Parties or its Agency under this Agreement, Articles 4, 5 and 6 of this Agreement shall apply respectively.

Article 8. Transfer Mode

Transfers referred to in Articles 4, 5, 6 and 7 shall be made without undue delay and in any case within six months, provided that the payment of the tax obligations has been made in the meantime.

These transfers will be made in currency convertible at the exchange rate applicable on the date on which the employer requests the transfer unless there is a special agreement between the entrepreneur and the financial institution

Article 9. Settlement of Disputes between Investors and Contracts Parties

1. Disputes between one of the Contracting Parties and investors of the other Contracting Party relating to expropriation, nationalization, seizure and similar measures, including disputes over the amount of compensation, shall, to the extent possible, be settled amicably.

2. If a dispute can not be settled amicably within a period of six months starting from the date of the request of one of the Parties, submitted in writing, the investor concerned may submit the dispute:

a) To the Court of the Contracting Party having jurisdiction over the territory and its higher claims;

b) To an "ad hoc" arbitration tribunal, in accordance with the Arbitration Rules of the United Nations Commission on International Commercial Law (UNCITRAL);

c) To the "International Investment Regulatory Center" for the implementation of the arbitration procedures laid down in the Washington Convention of 18 March 1965 on the "Rules on Contracts concerning Investments between States and Citizens of Other States" .

3. The two Contracting Parties shall refrain from dealing diplomatically with all matters relating to an arbitration or a judicial proceeding in progress until those proceedings are terminated and one of the Parties concerned shall not have failed to comply with the judgment of the Court of First Instance Arbitrators or the designated court of first instance, in the time-limits laid down by the judgment or in the terms to be determined on the basis of national or international law applicable to the matter.

Article 10. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, to the extent possible, be settled amicably by diplomatic means.

2. If disputes can not be settled within three months of the date on which one of the two Contracting Parties submitted a written request, they shall at the time of application to one of the two Contracting Parties submit an ad hoc arbitral tribunal, in accordance with the provisions of this Article.

3. The arbitral tribunal shall be constituted as follows: each of the Contracting Parties shall appoint a member of the Tribunal within a period of two months starting from the date of receipt of the request for arbitration. Subsequently, the two members will choose a third-country national, who will assume office as President. The Chairman shall be appointed within three months from the date of the designation of the other two members.

4. If designations have not been made within the time limit provided for in paragraph 3 of this Article, each of the two Contracting Parties may, in the absence of other agreements, request that they be made by the President of the International Court of Justice. If he is a citizen of one of the Contracting Parties, or if it is impossible for him to accept this assignment for other reasons, the Vice-President will be invited to do so. If the Vice-President is also a citizen of one of the two Contracting Parties or if he is also unable to accept it, the member of the International Court of Justice who follows in seniority, and who is not a citizen of either Contracting Party shall be invited to do so.

5. The Arbitral Tribunal shall decide by majority vote and its decisions shall be of a mandatory nature. Each Contracting Party shall bear the costs of its arbitrator and the costs relating to his participation in the arbitration proceedings. The expenses relating to the President and all other expenses shall be fairly divided between the two Parties. The Arbitral Tribunal will establish its own procedures.

Article 11. Relations between Governments

The provisions of this Agreement will be applied irrespective of the existence or otherwise of diplomatic or consular relations between the Contracting Parties.

Article 12. Preferential Terms

1. If a matter is governed both by this Agreement and by any other international agreement to which the two Contracting Parties have adhered or otherwise regulated by general international law, the Contracting Parties and their investors will benefit from more favorable provisions in their case.

2. This Agreement does not in any way affect the most favorable terms concluded between one of the Contracting Parties and the investors of the other Contracting Party.

Article 13. Final Provisions

1. This Agreement shall enter into force on the date on which the two Contracting Parties have notified the execution of their respective constitutional procedures.

2. This Agreement shall remain in force for a period of ten years from the date of execution of the notification procedures referred to in paragraph 1 of this Article and shall be renewed tacitly for periods of five years unless one of the two Parties denies it In writing one year before the expiry of the current period.

3. In the event of a complaint, investments made prior to the expiry date of this Agreement shall remain in force for a period of five years from the same date.

Done in duplicate at Libreville on 28 June 1999 in the Italian and French languages, both texts being equally authentic.

For the Government of the Italian Republic

Rino SERRI

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For the Government of the Gabonese Republic

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