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

The Government of the Italian Republic and the Government of Turkmenistan, hereafter referred to as "Contracting Parties",

DESIRING to establish favourable conditions to enhance economic co-operation between the two Countries, and especially in relation to capital investments by investors of one Contracting Party in the territory of the other Contracting Party, and

ACKNOWLEDGING that the mutual encouragement and protection of such investments on the basis of international Agreements will contribute to stimulate economic relations which will foster the prosperity of both Contracting Parties;

HAVE agreed as follows:

Article I. Definitions

For the purposes of this Agreement:

1. The term "investment" shall mean any kind of asset invested, before or after the entry into force of this Agreement, by investors of a Contracting Party in the territory of the other Contracting Party, in conformity with the Jaws and regulations of that Party, irrespective of the legal form chosen, as well as of the legal framework. Without limiting the generality of the foregoing, the term "investment" shall include in particular, but not exclusively:

a) movable and immovable property and any ownership rights in rem, including real guarantee rights on a property of a third party, to the extent that it can be invested;

b) shares, debentures, equity holdings and any other instruments of credit, as well as Government and public securities in general;

c) credits for sums of money connected with an investment as well as reinvested incomes and capital gains or any service right having an economic value as integral part of an investment;

d) copyright, commercial trade marks, patents, industrial designs and other intellectual and industrial property rights, know-how, trade secrets, trade names and goodwill;

e) any economic right accruing by law or by contract and any licence and franchise granted in accordance with the provisions in force on economic activities, including the right to prospect for, extract and exploit natural resources;

f) any increase in value of the original investment;

g) any alteration of the legal form chosen for the investments shall not affect their classification as investments.

2. The term "investor" means, for either Contracting Party, the following subjects who invest in the territory of the other Contracting Party in accordance with the laws of the latter Contracting Party and the provisions of this Agreement:

a) any natural person who is a national of either Contracting Party in accordance with its laws; or

b) any legal entity such as company, corporation, firm, partnership, business association, institution or organisation, incorporated or constituted in accordance with the laws and regulations of the Contracting Party and having its registered office or central administration or principal place of business within the jurisdiction of that Contracting Party, irrespective of whether or not for profit and whether its liabilities are limited or not.

3. The term "income" shall mean the money accrued or accruing to an investment, including in particular profits or interests, dividends, royalties, payments for assistance or technical services and other services, as well as any considerations in kind.

4. The term "territory" shall mean in addition to the zones comprised within land borders also the "maritime zones". The latter shall include also marine and submarine zones over which the Contracting Parties exercise sovereignty and sovereign or jurisdictional rights under international law.

5. The term "investment agreement" shall mean an agreement that a Contracting Party may stipulate with an investor of the other Contracting Party in order to regulate the specific relationship concerning the investment.

6. The term "non-discriminatory treatment'' shall mean treatment that is at least as favourable as the best between national treatment and the most-favoured-nation treatment.

7. The term ''right of access" shall mean the right to be admitted to invest in the territory of the other Contracting Party, without prejudice to the limitations stemming from international agreements which are binding for either Contracting Party.

8. The term "activities connected with an investment'' shall include, inter a/ia, the organisation, control, operation, maintenance and disposal of companies, branches, agencies, offices or other organisations for the conduct of business; the access to the financial markets; the borrowing of funds; the purchase, sale and issue of shares and other securities and the purchase of foreign exchange for imports necessary for the conduct of business affairs; the marketing of goods and services; the procurement, sale and transport of raw and processed materials, energy, fuels and production means and the dissemination of commercial information.

Article II. Promotion and Protection of Investments

1. Both Contracting Parties shall encourage investors of the other Contracting Party to invest in their territory and shall admit such investments in accordance with its laws and regulations.

2. Investors of either Contraciing Parties shall have the right of access to investments activities in the territory of the other Contracting Party, which shall be not less favourable than that under Article III, paragraph 1.

3. Both Contracting Parties shall at all times ensure just and fair treatment to investments of investors of the other Contracting Party. Both Contracting Parties shall ensure that the management, maintenance, use, transformation, enjoyment or disposal of the investments effected in their territory by investors of the other Contracting Party, as well as by companies and enterprises in which these investments have been effected, shall in no way be the object of unjustified or discriminatory measures.

4. Each Contracting Party shall create and maintain in its territory a legal framework capable of guaranteeing to investors the continuity of legal treatment, including compliance in good faith to all undertakings entered into with regard to each individual investor.

5. Neither Contracting Parties shall set any conditions for the establishment, expansion or continuation of investments which might imply taking over or imposing any obligations on export production and specifying that goods must be procured locally or similar conditions.

6. In accordance with its laws and regulations, each Contracting Party shall grant to nationals of the other Contracting Party, who are in its territory in connection with an investment under this Agreement, adequate working conditions for carrying out their professional activities. Each Contracting Party shall regulate as favourably as possible the problems connected with the entry, stay, work and movement in its territory of the above nationals of the other Contracting Party and members of their families. Companies constituted under the laws and regulations of one Contracting Party and which are owned or controlled by investors of the other Contracting Party shall be permitted to engage top managerial personnel of their choice, regardless of nationality, in accordance with the laws of the host Contracting Party.

Article III. National Treatment and the Most Favoured Nation Clause

1. Both Contracting Parties, within their own territory, shall offer investments effected by, and income accruing to, investors of the other Contracting Party no less favourable treatment than that accorded to investments effected by, and income accruing to, its own nationals or investors of Third States. The same treatment will be granted to the activities connected with an investment.

2. Should, from the legislation of either Contracting Parties or from the international obligations in force or that may come into force in the future for one of the Contracting Parties, come out a legal framework according to which investors of the other Contracting Party would be granted a more favourable treatment than the one provided in this Agreement, the treatment granted to the investors of such other Party will apply to investors of the relevant Contracting Party also for the outstanding relationships.

3. The provisions under paragraphs I and 2 of this Article do not refer to the advantages and privileges which one Contracting Party may grant to investors of Third States by virtue of their membership to a Customs or Economic Union, a Common Market, to a Free Trade Area, to a regional or sub-regional Agreement, to an international multilateral economic Agreement or under Agreements to avoid double taxation or to facilitate cross border trade.

Article IV. Compensation for Damages or Losses

1. Should investors of either Contracting Parties incur losses or damages on their investments in the territory of the other Contracting Party due to war, other forms of armed conflict, a state of emergency, civil strife or other similar events, the Contracting Party in whose territory the investment has been effected shall offer adequate compensation in respect of such losses or damages, irrespective of whether they have been caused by governmental forces or other subjects. Compensation payments shall be made in freely convertible currency, freely transferable without undue delay.

2. The investors concerned shall receive in any case the same treatment as the nationals of the other Contracting Party and, at all events, no less favourable treatment than investors of Third States.

Article V. Nationalisation or Expropriation

1. Investments covered by this Agreement shall not be subjected to any measure which might limit the right of ownership, possession, control or enjoyment of the investments, permanently or temporarily, unless specifically provided for by current, national or local law and regulations and orders issued by Courts or Tribunals having jurisdictions.

2. Investments and the activities connected with an investment of investors of one of the Contracting Parties shall not be, de jure or de facto, directly or indirectly, nationalised, expropriated, requisitioned or subjected to any measures having an equivalent effect, including measures affecting companies and their assets controlled by the investor in the territory of the other contracting Party, except for public purpose or national interest and in exchange for immediate, full and effective compensation, and on condition that these measures are taken on a non-discriminatory basis and in confonnity with all legal provisions and procedures.

3. The just compensation shall be equivalent to the fair market value of the expropriated investment immediately prior to the moment in which the decision to nationalise or expropriate was announced or made public. Whenever there are difficulties in ascertaining the fair market value, it shall be determined according to the internationally acknowledged evaluation standards. Compensation shall be calculated in a convertible currency at the prevailing exchange rate applicable on the date in which the decision to nationalise or expropriate was announced or made public and shall include interests calculated on the basis of EURIBOR standards from the date of nationalisation or expropriation to the date of payment and shall be freely collectable and transferable. Once the compensation has been determined, it shall be paid without undue delay and in any case within one month.

4. In case the object of the expropriation is a joint-venture constituted in the territory of either Contracting Party, the compensation to be paid to the investor of a Contracting Party shall be calculated taking into account the value of the share of such investor in the joint-venture, in accordance with its relevant documents and adopting the same evaluations criteria referred to in paragraph 3 of this Article.

5. A national or company of either Contracting Party asserting that all or part of its investments has been expropriated shall enjoy the right of a prompt review by the appropriate judicial or administrative authorities of the other Contracting Party, in order to determine whether any such expropriation occurred and, if so, whether expropriation and any compensation thereof conform to the principles of international law, and in order to decide all other relevant matters.

6. If, after the expropriation, the expropriated investment does not serve the anticipated purpose, wholly or partially, the former owner or his/its assignee/s shall be entitled to repurchase it. The price of such expropriated investment shall be calculated with reference to the date on which the repurchasing takes place, adopting the same evaluation criteria taken into account when calculating the compensation referred to in paragraph 3 of this Article.

Article VI. Repatriation of Capital, Profits and Income

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

a) capital and additional capital, including reinvested income, used to maintain and increase investment;

b) the net income, dividends, royalties, payments for assistance and technical services, interests and other profits;

c) income deriving from the total or partial sale or the total or partial liquidation of an investment;

d) funds to repay loans connected to an investment and the payment of relevant interests;

e) remuneration and allowances paid to nationals of the other Contracting Party for work and services performed in relation to an investment effected in the territory of the other Contracting Party, in the amount and manner provided for by national legislation and regulations in force;

f) compensation payments under Article IV.

2. The fiscal obligations under paragraph I above are deemed to be complied with when the investor has fulfilled the procedures provided for by the legislation of the Contracting Party in whose territory the investment has taken place.

3. Without restricting the scope of Article III of this Agreement, both Contracting Parties undertake to apply to the transfers mentioned in paragraph 1 of this Article the same favourable treatment that is accorded to investments effected by investors of Third States, in case it is more favourable.

4. In the event that, due to very serious balance of payments problems, one Contracting Party were to temporarily restrict transfer of funds, these restrictions shall be applied to the investments related to this Agreement, only if the Contracting Party implements the relevant recommendations adopted by the International Monetary Fund in the specific case.
The restrictions shall be adopted on an equitable and non-discriminatory basis and in good faith.

Article VII. Subrogation

In the event that one Contracting Party or an Institution thereof has provided a guarantee in respect of non-commercial risks for the investment effected by one of its investors in the territory of the other Contracting Party, and has effected payment to said investor on the basis of that guarantee, the other Contracting Party shall recognise the assignment of the rights of the investor to the former Contracting Party. In relation to the transfer of payment to the Contracting Party or its Institution by virtue of this assignment, the provisions of Articles IV, V and VI of this Agreement shall apply.

Article VIII. Transfers

The transfers referred to in Articles IV, V, VI and VII shall be effected in a freely convertible currency, without undue delay and, in any case, within two months following the execution of all procedures set forth by the foreign exchange regulations of the Contracting Party, in which territory the investments have been effected, at the prevailing exchange rate applicable as at the date on which the investor applied for the relevant transfer, with the exception of the provisions under paragraph 3 of Article V concerning the exchange rate applicable in case of nationalisation or expropriation.

Article IX. Duties and the Responsibility of Investors

In cases not stipulated by this Agreement, the investors shall observe the current legislation of the Contracting Party, in which territory the investments have been effected, and, in case of this legislations infringement, bear the respective responsibility.

Article X. Settlement of Disputes between the Contracting Parties

1. Any dispute, which may arise between the Contracting Parties, relating to the interpretation and application of this Agreement shall, as far as possible, be settled through consultation and negotiation.

2. In the event that the dispute cannot be settled within six months from the date on which one of the Contracting Parties notifies the other Contracting Party in writing, the dispute shall, at the request of one of the Contracting Parties, be laid before an ad hoc Arbitration Tribunal as provided for in this Article.

3. The Arbitration Tribunal shall be constituted in the following manner: within two months from the moment on which the request for arbitration is received, each of the two Contracting Parties shall appoint a member of the Tribunal. The President shall be appointed within three months from the date on which the other two members are appointed.

4. If, within the period specified in paragraph 3 of this Article, the appointment has not been made, each of the two Contracting Parties can, in default of other arrangements, ask the President of the International Court of Justice to make the appointment. In the event that the President of the Court is a national of one of the Contracting Parties or if, for any reason,

it is impossible for him to make the appointment, the application shall be made to the Vice-President of the Court. If the Vice-President of the Court is a national of one of the Contracting Parties or, for any reason, is unable to make the appointment, the most senior member of the International Court of Justice, who is not a national of one of the Contracting Parties, shall be invited to make the appointment.

5. The Arbitration Tribunal shall rule with a majority vote, and its decision shall be binding. Both Contracting Parties shall pay the cost of their own arbitration and of their representative at the hearings. The President's cost and any other cost shall be divided equally between the Contracting Parties. The Arbitration Tribunal shall lay down its own procedure.

Article XI. Settlement of Disputes between Investors and Contracting Parties

1. Any dispute which may arise between one of the Contracting Parties and the investor of the other Contracting Party on investments, including disputes relating to the amount of compensation, shall as far as possible be settled through consultation and negotiation.

2. In case the investor and one entity of either Contracting Parties stipulated an investment agreement, the procedure foreseen in such investment agreement shall apply.

3. In the event that such dispute cannot be settled as provided for in paragraph I of this Article within six months from the date of the written application for settlement, the investor in question may submit at his choice the dispute for settlement to:

a) the Contracting Party's Court having territorial jurisdiction;

b) an ad hoc Arbitration Tribunal, in compliance with the arbitration regulation of the UN Commission on International Trade Law (UNCITRAL); the host Contracting Party undertakes hereby to accept reference to said arbitration;

c) the International Centre for Settlement of Investment Disputes, for the implementation of the arbitration procedure, under the Washington Convention of 18 March, 1965, on the Settlement of Investment Disputes between State and Nationals of other State, if or as soon as both Contracting Parties have acceded to it.

4. Under paragraph 3, lett. b), of this Article, arbitration shall be conducted pursuant to the following provisions: the Arbitration Tribunal shall be composed of three arbitrators; if they are not nationals of either Contracting Party, they shall be nationals of States having diplomatic relations with both Contracting Parties, appointed by the President of the Arbitration Institute of the Stockholm/Paris Chamber, in his capacity as Appointing Authority. The arbitration will take place in Stockholm/Paris, unless the two Parties in the arbitration have agreed otherwise. When delivering its decision, the Arbitration Tribunal shall apply the provisions contained in this Agreement, as well as the principles of international law recognised by the two Contracting Parties. The arbitration decision in the territory of the Contracting Parties shall be implemented in compliance with their respective national legislation and the relevant international Conventions they are Parties to.

5. Both Contracting Parties shall refrain from negotiating through diplomatic channels any matter relating to an arbitration procedure or judicial procedure underway until these procedures have been concluded, and if one of the Contracting Parties has failed to comply with the ruling of the Arbitration Tribunal or the Court of law within the period envisaged by the ruling, or else within the period which can be determined on the basis of the international or domestic law provision which can be applied to the case.

Article XII. Relation between Governments

The provisions of this Agreement shall be applied irrespective of whether or not the Contracting Parties have diplomatic or consular relations.

Article XIII. Application of other Provisions

1. If a matter is governed both by this Agreement and another International Agreement to which both Contracting Parties are signatories, and by general international law provision, the most favourable provision shall be applied to the Contracting Parties and to their investors.

2. Whenever the treatment accorded by one Contracting Party to the investors of the other Contracting Party, according to its laws and regulations or other provisions or specific contract or investment authorisation or agreements, is more favourable than that provided under this Agreement, the most favourable treatment shall apply.

3. After the date when the investment has been made, any substantial modification the legislation of the Contracting Party regulating directly or indirectly the investment, shall not be applied retroactively and the investments made under this Agreement shall therefore be protected.

4. The provisions of this Agreement shall not, however, limit the application of the national provisions aimed at preventing fiscal evasion and elusion. To this purpose the competent authorities of each Contracting Party commit themselves to provide any useful information upon request by the other Contracting Party.

Article XIV. Entry Into Force

This Agreement shall enter into force on the date of the receipt of the last of the two notifications by which the two Contracting Parties shall officially have communicated to each other that their respective ratification procedures have been completed.

Article XV. Duration and Expiry

1. This Agreement shall remain effective for a period of 10 years and shall remain in force for a further period of 5 years thereafter, unless either Contracting Party decides to denounce it not later than one year before its expiry date.

2. In case of investments effected prior to the expiry date, as provided for under paragraph 1 of this Article, the provisions of Articles I to XIII shall remain effective for a further period of five years.

In witness thereof the undersigned Representatives, duly authorised by their respective Governments, have signed the present Agreement.

DONE at Rome, on 25/11/09 in two originals each in the Italian, Turkmen and English languages, all texts been equally authentic. In case of any divergence on interpretation, the English text shall prevail.

For the Government of the Italian Republic

For the Government of Turkmenistan