

AGREEMENT BETWEEN THE SULTANATE OF OMAN AND THE ITALIAN REPUBLIC FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Sultanate of Oman and the Government of the Italian Republic, hereinafter collectively referred to as the Contracting Parties and each referred to as Contracting Party,

Desiring to create favourable conditions for greater economic co-operation between them and in particular for investments by investors of one Contracting Party in the territory of the other Contracting Party,

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 Parties,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investment" irrespective of the legal form adopted or the legal system having jurisdiction shall comprise every kind of asset invested before or after the entry into force of this Agreement by a natural or legal person including the investments of the Government of a Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of each Party.

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 including, such as mortgages, liens, pledges, usufruct and similar rights;
- b) shares, stocks and debentures of companies or other rights or interests in such companies and government-issued securities;
- c) claims to money or to any performance having economic value associated with an investment;
- d) copyright, trademarks, patents, industrial designs and other industrial property rights, know-how, trade secrets, and trade names and goodwill;
- e) any right conferred by law or contract and any licences and permits pursuant to law, including the right to search for, extraction and exploitation of natural resources.

(2) The term "investor" shall mean any natural or legal person including the Government of a Contracting Party who effects or is effecting in accordance with an agreement signed to invest in the territory or maritime zones of the other Contracting State

(3) The term "natural person" shall mean with respect to either Contracting Party a natural person holding the nationality of that State in accordance with its laws.

(4) The term "legal person" shall mean with respect to either Contracting Party any entity established in accordance with, and recognized as a legal person by the laws of either Contracting Party, such as public institutions, corporations, authorities, foundations, private companies, firms, establishments and organizations, ave of whether their abilities are limited or otherwise, (and any entity established outside the jurisdiction of a Contracting Party as a legal person and in which such Contracting Party or any of its nationals or any legal person established within its jurisdiction has a predominant interest).

(5) The term "income" shall mean amounts yielded or still to be yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, share dividends, royalties or fees, returns for assistance and technical

services and other miscellaneous considerations, including reinvested income and capital gain.

(6) The term "territory" shall mean, in addition to the land within its boundary limits, also the economic regions and the territorial sea. The latter includes the territorial waters and the sub-soil below such waters, upon which the Contracting States exercise their sovereign rights, jurisdictional rights, in accordance with international law.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall in its ae promote as far as possible investments by nationals or persons of the other Contracting Party and admit such investments in accordance with its laws and regulations.

(2) Each Contracting Party shall at all times ensure fair and equitable treatment to the investments of investors of the other Contracting Party. Each Contracting Party shall ensure that the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party shall not in any way be subjected to or impaired by unjustified or discriminatory measures.

Article 3. Most-favoured-nation Provisions

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

(2) Each Contracting Party shall in its territory accord investments of the other Contracting Party, as regards management, maintenance, use enjoyment or disposal of their investment as well as the activities connected with investments, treatment not less favourable that which it accords to investors of any third State.

(3) The treatment mentioned above shall not apply to any advantage accorded to investors of a third State by either Contracting Party based on the membership of that Contracting Party in a Customs Union, Common Market, Free Trade zone, regional or sub-regional arrangement, economic multilateral international Agreement or based on an Agreement concluded between that Contracting Party and a third State on avoidance of double taxation, or for facilitation of frontier trade.

Article 4. Compensation for Damage or Loss

(1) When investments by investors of either Contracting Party suffer loss owing to war, other armed conflicts, a state of national emergency or other similar events in the territory of the other Contracting Party, they shall receive just and adequate compensation for the loss sustained. Resultant payments shall be freely transferable in convertible currency without undue delay (and the compensated investor shall have the right to request conversion from local currency at an exchange rate ruling on the last business day prior to the events leading to his loss).

(2) Investors of either Contracting Party shall enjoy, in respect of the matters provided for in this Article of this Agreement, the same treatment accorded to nationals of the Contracting Party having liability or, to nationals or legal persons of any third State, whichever is more favourable to the nationals or legal persons concerned.

Article 5. Nationalisation or Expropriation

(1) Investments of national or legal persons of either Contracting Party, shall not be nationalised, expropriated or subjected to measures having the effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose related to the internal needs of that Party on a non-discriminatory basis and against prompt, adequate and effective compensation. Such one shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge whichever is the earlier, shall include interest at the current LIBOR rate until the date of payment, shall be made without delay, be effectively realizable and be freely transferable. In the absence of agreement between the parties as to determination of compensation, either party shall have the right to refer the dispute for settlement in accordance with Article 9 of this Agreement.

(2) Where a Contracting Party nationalizes or expropriates the investment of a legal person which is established or licensed, under the law in force, in its territory and in which the other Contracting Party or any of its natural or legal persons own shares, stocks, debentures or other rights or interest, it shall ensure that prompt, adequate and just compensation is received and allowed to be repatriated. Such compensation shall be determined on the basis of the recognized principles of valuation such as the market value of the shares immediately prior to the point of time when the decision for nationalization or expropriation was announced or became publicly known. The compensation shall include interest at the current LIBOR

rate of interest from the date of nationalization or expropriation until the date of payment.

(3) Such compensation shall represent the fair market value of the investment immediately prior to the point of time when the decision for nationalization or expropriation was announced or became publicly known and shall be determined in accordance with recognised principles of valuation such as market value. Where the market value cannot be readily ascertained, the compensation shall be determined on equitable principles taking into account inter alia, the capital invested, depreciation, capital already repatriated, replacement value, goodwill and other relevant factors. The compensation shall include interest at the current LIBOR rate of interest from the date of nationalization or expropriation until the date of payment.

(4) The determination of the compensation, in the absence of agreement being reached between the investor and the host state, shall be referred to the settlement procedures in accordance with Article 9 of this Agreement.

Such compensation shall in order to be effective for the claimants, be paid and made transferable, without undue delay, to the country and by the claimants concerned and in the currency of the fake of which the claimants are nationals or persons or in any convertible currency accepted by the claimants.

(5) The provisions of paragraph (1), (2) and (3) of this Article shall also apply to the current income from an investment as well as, in the event of liquidation, to the proceeds from the liquidation.

Article 6. Repatriation of Capital Profits and the Return Income

(1) Each Contracting Party shall guarantee without undue delay and after the performance of all fiscal obligations, including income tax, the unrestricted transfer in any convertible currency of:

- (a) capital and additional capital amounts used to maintain and increase and expand existing investments;
- (b) net income, dividends, service fees accruing from technical assistance, interest and other current profits accruing from any investment by an investor of the other Contracting Party;
- (c) the proceeds accruing from the total or partial sale or total or partial liquidation of any investment made by an investor of the other Contracting Party;
- (d) In repayment of loans made by investors of the other Contracting Party as well as accrued interests;
- (e) the earnings of nationals of the other Contracting Party deriving from their work and services in connection with an investment in its territory in accordance with its national laws and regulations;

(2) Without restricting the generality of Article 3 of this agreement the Contracting Parties undertake to accord to transfers referred to in paragraph (1) of this Article a treatment as favourable as that accorded to transfers originating from investments made by investors of any third State. Such transfers shall be in convertible currency at the exchange rate ruling on the transfer date.

Article 7. Transfer of the Insured Investor Rights

In case one Contracting Party or any of its institutions has granted any guarantee against non-commercial risks in respect of an investment by its investor in the territory of the other Contracting Party and has made payment to such investor under that guarantee, the other Contracting Party shall recognize the transfer of the rights of the insured investor to the Contracting Party guarantor and the subrogation of the one Contracting Party shall not exceed the original rights of such investor. As regards the transfer of payments to be made to the Contracting Party by virtue of such subrogation Article 4, 5 and 6 shall apply respectively.

Article 8. Transfers

Transfer under Article 4 shall be made in accordance with the procedures and rules specified therein, and transfer under article 5, 6 and 7 shall be made without undue delay, within three months, after the performance of the fiscal obligations. Such transfers shall be made in convertible currency at the prevailing rate of exchange applicable on the date the transfer is made. The compensated investor shall have the right to request conversion from local currency at an exchange rate ruling on the last business day prior to the events leading to his loss.

Article 9. Settlement of Investment Disputes

(1) All kinds of disputes or differences, including disputes over the amount of compensation for expropriation, requisition, nationalization or similar measures, between one Contracting Party and an investor of the other Contracting Party concerning an investment of that investor in the territory and maritime zones of the former Contracting Party shall, if possible, be settled amicably.

(2) If such disputes or differences cannot be settled at the provisions of paragraph (1) of this Article within six months from the date of a written request for settlement, the investor concerned may submit the dispute to:

(a) the competent court of the Contracting Party having territorial jurisdiction for decision; or

(b) the arbitral tribunal according to the provisions provided in the protocol.

(3) Neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have been exhausted and a Contracting Party has failed to abide by or to comply with the award rendered by the Arbitral Tribunal.

Article 10. Settlement of Disputes between Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled, as far as possible, through friendly consultation by both States through diplomatic channels.

(2) If such disputes cannot be so settled within three months from the date on which either Contracting Party informs in writing the other Contracting Party, they shall, upon the request of either Contracting Party, be submitted to an ad hoc 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 Party shall appoint one member of the tribunal. The two members shall then select a national of a third State who shall act as Chairman (hereafter referred to as the Chairman).

The Chairman shall be appointed within three months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3) of this Article either party shall not have appointed its arbitrator or the two arbitrators shall not have agreed on the Chairman, a request may be made to the President of the International Court of Justice to make the appointments. If he happens to be a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointments. If the Vice-President also happens to be a national of either Contracting Party 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 Party shall be invited to make the appointments.

(5) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting Party shall bear the cost of its own arbitrator and its counsel in the arbitral Proceedings; the cost of the President and the remaining costs shall be borne in equal parts by both Contracting Parties. The arbitral tribunal shall determine its own procedures.

Article 11. Relations between Contracting Parties

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

Article 12. Application of other Rules

(1) Where an issue is governed both by this Agreement and by another international agreement to which both Contracting Parties are parties or whenever it is governed otherwise by general international law, the most favourable provisions case by case shall be applied to the Contracting Parties and to their investors.

(2) Whenever, as a result of laws, regulations, provisions or specific contracts, one of the Contracting Party has adopted a more advantageous treatment for the investors of the other Contracting Party than that provided in this Agreement, they shall be accorded that more favourable treatment.

Article 13. Agreement and Protocol Entry Into Force

This Agreement and the accompanying protocol, which is part and parcel thereof, shall come into force on the later date on

which either Contracting Party notifies the other through diplomatic channels that its constitutional requirements for the entry into force of this Agreement have been fulfilled.

Article 14. Duration and Termination

(1) This Agreement shall remain in force for a period of ten years and shall continue in force thereafter for another similar period or periods unless either Contracting Party notifies, at least one year before its expiration, the other Contracting Party his intention of termination.

(2) In respect of investments made prior to the date of termination of the Agreement, the provisions of Article 1 to 12 shall continue to be effective for a further period of ten years from the date of termination of the Agreement.

In witness whereof the undersigned duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Roma on this third day of Muharram 1414, corresponding to the 23rd day of June 1993, in the Arabic, Italian and English languages, all texts being equally authentic.

In case of any divergency, the English text shall prevail.

For the Government of The Sultanate of Oman

For the Government of The Italian Republic