# BETWEEN THE GOVERNMENT OF THE ITALIAN REPUBLIC AND THE GOVERNMENT OF MONGOLIA ON THE PROMOTION AND PROTECTION OF INVESTMENTS.

The Government of the Italian Republic and the Government of Mongolia (hereafter referred to as the Contracting Parties),

Desiring to establish favourable conditions for improved economic co-operation between the two countries, and especially. for investments by nationals of one. Contracting Party in the territory of the other Contracting Party; and

Acknowledging that offering encouragement and mutual protection to such investments, based on international Agreements, will contribute towards stimulating business ventures that will foster the prosperity of both Contracting Parties,

Hereby agree 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 be construed to mean any kind of property invested before or after the entry into force of this Agreement by a natural or legal person being a national of one. Contracting Party in the territory of the other, in conformity, with the law and regulations of the latter.

Without limiting the generality of the foregoing, the term "investment" comprises:

a) Movable and 'immovable property, and any other rights in rem including, insofar as they may be used for investment purposes, real guarantees on others' property;

b) Shares, debentures, equity holdings and any other negotiable instrument or document of credit, as well as Government and public securities in general;

c) Credit for sums of money or any right for pledges or services having an economic value connected with investments, as well as reinvested income as defined in paragraph 5 hereafter;

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 right of a financial nature accruing by law or by contract and any licence, concession or franchise issued in accordance with current provisions governing the exercise of business activities, including prospecting for cultivating, extracting and exploiting natural resources.

2. The term "investor" shall be constructed to mean any natural or legal person being a national of a Contracting Party who effected, is effecting, or intending to effect, investments in the territory of the other Contracting Party.

3. The term "natural person" in reference to either Contracting Party, shall be construed to mean any natural person holding the nationality of that State.

4. The term "legal person", in reference to either Contracting Party, shall be construed to mean any entity established in the territory of one of the Contracting Parties, and recognized as legal person in accordance with the respective national legislation such as public establishments, joint-stock corporations or partnerships, foundations or associations, regardless of whether their liability is limited or otherwise.

5. The term "income" shall be construed to mean the money that has yielded or is still to yield by an investment, including, in particular, profits, interest income, income from capital investment, dividends, royalties, returns for assistance and technical services or other current incomes, including reinvested income and capital gains.

6. The term "territory" shall be construed to mean, in addition to the areas lying within the land boundaries, the "maritime zones". The latter also comprise the marine and submarine zones over which the Contracting Parties have sovereignty, or exercise sovereign, or Jurisdictional rights, according to international law.

## Article 2. Promotion and Protection of Investment

1. Both Contracting Parties shall encourage investors of the other Contracting Party to invest in their territory, and shall authorize these investments in accordance with their legislation.

2. Both Contracting Parties shall at all times ensure fair and equitable treatment of the investments of investors of the other Contracting Party. Both Contracting Parties shall ensure that the management, maintenance, enjoyment, transformation, cessation and liquidation of investments effected in their territory by investors of the other Contracting Party, as well as the companies and firms in which the investments have been made, shall in no way be subject to unjustified or discriminatory measures.

## Article 3. National Treatment and the Most Favoured Nation Clause

1. Both Contracting Parties, within the bounds of their own territory, shall offer investments effected by and the 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.

2. The treatment accorded to the activities connected with the investments of investors of either Contracting Party shall not be less favourable than that accorded to similar activities connected with investments made by their investors or by investors of any Third Country.

3. The provisions of 1) and 2) of this Article do not apply to any advantages or privileges which one Contracting Party grants or may grant at some future time to Third States by virtue of its membership in Customs or Economic Unions, Common Market associations, Free Trade Areas, regional or subregional Agreements, international multilateral economic Agreements, or Agreements entered into in order to prevent double taxation or to facilitate cross-border trade.

## Article 4. Compensation for Damages and Losses

Investors of one Contracting Party, whose investments in the territory of the other Contracting Party suffered losses owing to war or armed conflict, state of emergency or other similar events shall, as regards compensation or other forms of settlement, be Accorded by the latter Contracting Party treatment not less favourable than that which the latter Contracting Party accords to its own investors or to the investors of any third State. Any Payment made under this Article shall be freely transferable without undue delay.

## Article 5. Nationalization or Expropriation

1.

(1) The investments to which this Agreement relates shall not be subject to any measure which might limit permanently or temporarily their rights of ownership, possession, control or enjoyment, save where specifically provided by law and by judgements or orders issued by Courts or Tribunals having jurisdiction.

(2) Investments of investors of one of the Contracting Parties shall not be directly or indirectly nationalized, expropriated, requisitioned or subjected to any measures having similar effects in the territory of the other Contracting Party, except for public purposes, on national interest, against immediate full and effective compensation, and on condition that these measures are taken on a non-discriminatory basis, and in conformity with all legal provisions and procedures.

(3) The just compensation shall be equivalent to the real market value of the investment immediately prior to the moment in which the decision to nationalize or expropriate is announced or made public, and shall be calculated according to internationally acknowledged evaluation standards. Compensation shall include interest calculated on a six month LIBOR basis accruing from the date of nationalization or expropriation to the date of payment. In the event of failure to reach an agreement between the investor and the Contracting Party having liability, the amount of the compensation shall be calculated following the settlement of dispute procedure provided by Article 9 of this Agreement. Once the compensation has been determined, it shall be paid promptly and authorization for its repatriation in convertible currency issued.

2. The provisions of paragraph 1. of this Article shall also apply to income from an investment, and, in the event of windingup, to the proceeds of liquidation.

3. If after the dispossession, the good concerned has not been utilized, wholly or partially, for that purpose, then, the owner or his assignees are entitled to the repurchasing of the good at the market price..

## Article 6. Repatriation of Capital, Profits and Income

1. Each of the Contracting Parties shall guarantee that after investors have complied with all their fiscal obligations, they may transfer the following abroad, without undue delay, in any'convertible currency:

(a) Capital and additional capital amounts used to maintain and increase investments;

(b) Net income, dividends, royalties, payments for assistance and technical services, interest and any other profits;

(c) The proceeds of the total or partial sale or liquidation of an investment;

d) Funds to repay loans relating to an investment and interest due thereon;

(e) Remuneration and allowances paid to nationals of the other Contracting Party in respect of subordinate work and services performed in relation to an investment effected in its territory, in the amount and manner prescribed by current national legislation and regulations.

2. Transfer of proceeds mentioned in. paragraph (1) of this Article may be effected under the condition that the transferred convertible currency originates in the investment or in its returns.

3. Each Contracting Party shall take after fulfillment of the legal obligations pertaining to the investors, the necessary steps in order to ensure the execution without delay of the transfers mentioned in paragraph (1) of this Article.

4. Both Contracting Parties may adopt provisions governing the manner of complying with the fiscal obligations referred to in paragraph (1) above.

## Article 7. Subrogation

In the event that one Party or any of its institutions has provided an insurance guarantee in respect of non-commercial risks for investments effected by one of its investors in the territory of the other Contracting Party, and has made payments on the basis of that guarantee, the other Contracting Party shall recognize the assignment of the rights of the insured investor to the Contracting Party guarantor and its subrogation shall not exceed the original rights. In relation to the transfer of payments to the Contracting Party or its Institution by virtue of such subrogation, the provisions of Articles 4, 5 and 6 of this Agreement shall apply.

## Article 8. Transfer Procedures

The transfers referred to in Articles 4, 5, 6 and 7 shall be effected without undue delay and, at all events, within six months, provided that all fiscal obligations have been met. Transfers shall be made in a convertible currency at the prevailing exchange rate applicable on the date of the transfer.

## Article 9. Settlement of Disputes between Investors and the Contracting Parties

1. Any disputes arising between a Contracting Party and the investors of the other, including disputes relating to compensation for expropriation, nationalization, requisition or similar measures, and disputes relating to the amount of the relevant payments, shall be settled amicably, as far as possible.

2. In the event that such a dispute cannot be settled amicably within six months of the date of a written application, the Investor in question may submit the dispute at his discretion, for settlement to:

a) The Contracting Party's Court, at all instances, having territorial jurisdiction;

b) An ad hoc Arbitration Tribunal, in accordance with the Arbitration Rules of the "UN Commission on International Trade Law"(UNCITRAL);

c) The "International Centre for the Settlement of Investment Disputes", for the application of the arbitration procedures provided by the Washington Convention of 18th March 1965 on the "Settlement of Investment Disputes between States and Nationals of other States" whenever, or as soon as both Contracting Parties have validly acceded to it

3. Both Contracting Parties shall refrain from negotiating through diplomatic channels any matter relating to any arbitration

procedure or judicial procedures that may have been instituted until these procedures have been concluded, and one of the Contracting Parties has failed to comply with the ruling of the arbitration tribunal on the judgement of the court of law within the terms prescribed by the ruling or the judgement, or any other terms that may derive from international or internal law applicable to the case at issue.

## Article 10. Settlement of Disputes between the Contracting Parties

1. Any disputes which may arise between the Contracting Parties relating to the interpretation and application of this Agreement shall, as far as possible, be settled amicably through diplomatic channels.

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

3. The Arbitration Tribunal shall be constituted in the following manner: within two months from the receipt of the request for arbitration, each Contracting Party, shall appoint a member of the Tribunal. These two members shall then select a national of a Third State to act as Chairman. The Chairman shall be appointed within three months from the date on which the other two members are appointed.

4. If the appointments have not been agreed within the time provided by paragraph 3. of this Article, either of the Contracting Parties, in default of any other arrangement, may apply to the President of the International Court of Justice to make the appointments within three months. In the event that the President of the Court is a national of one of the Contracting Parties or he is otherwise prevented from discharging the said function, 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 he is equally prevented from discharging the said function for any reason, 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 appointments.

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

## Article 11. Application of other Provisions

1. Whenever any issue is governed both by this Agreement and by another International Agreement to which both the 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, provision or specific contracts, one of the Contracting Parties has adopted more advantageous treatment for the investors of the other Contracting Party than that provided in this Agreement, shall be accorded that more favourable treatment.

## Article 12. Entry Into Force

This Agreement shall enter into force on the date the Contracting Parties notify each other that all legal requirements for its entry into force have been fulfilled.

## Article 13. Duration and Expiry Date

1. This Agreement shall remain effective for 10 years as from the date in which the constitutional procedures indicated in Article 12 have been effected, and it shall be tacitly renewed for further periods of 5 years, unless either Party terminates it by giving prior written notice thereof one year before any expiry date.

2. In the case of investments effected prior to the expiry date of the present Agreement, as provided in this Article 13 the, provisions of Articles 1 to 11 shall remain effective for a further five years after the aforementined dates.

DONE AT Rome, this 15th day of January, one thousand nine hundred and three, in two copies, both in the English language, both texts being authentic

FOR THE GOVERNMENT OF MONGOLIA

FOR THE GOVERNMENT OF THE REPUBLIC OF ITALY