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

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

Desiring to establish favourable conditions for improved 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,

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

Have agreed as follows:

Article 1. Definitions

1. For the purposes of this Agreement:

Investment has been made in accordance with laws and regulations of the latter Contracting Party and shall include in particular, but not exclusively:

a) Movable and immovable property as well as any other property rights and right "in rem" such as pledges, liens and mortgages;

b) Shares, debentures, equity holdings or any other form of participation in a company and any other instruments of credit, as well as Government securities;

c) Claims to money or any performance having an economic value connected with an investment, as well as reinvested incomes and capital gains;

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 rights accruing by law or by contract and any license and concession 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.

Any modification in the form of the investment does not imply a change in the nature thereof.

2. The term "investor" shall mean any natural or legal person of a Contracting Party investing, directly or through its own subsidiaries, in the territory of the other Contracting Party.

3. The term "natural person", in reference to either Contracting Party, shall mean any natural person holding the nationality of that State in accordance with its laws.

4. The term "legal person", in reference to either Contracting Party, shall mean any entity, which is constituted or otherwise duly organized under the law of one of the Contracting Parties, having its head office in the territory of one of the Contracting Parties and recognised by it.

5. The term "income" shall mean the amounts yielded by an investment and in particular, though not exclusively, includes profits, interests, capital gains, dividends, royalties, fees and any other form of payments both in money and in kind.

6. The term "territory" shall mean, in addition to the zones contained within the land boundaries, the "maritime zones". The

latter also comprise the marine and submarine zones over which the Contracting Parties exercise sovereignty, and sovereign or jurisdictional rights, under international law.

7. "Investment agreement" shall mean an agreement between a Contracting Party (or its agencies or instrumentalities) and an investor of the other Contracting Party concerning an investment.

8. "Right of access" shall mean the right of the investor of a Contracting Party to be admitted to carry out investments in the territory of the other Contracting Party.

Article 2. Promotion and Protection of Investments

1. Both Contracting Parties shall encourage investors of the other Contracting Party to invest in their territory according to their laws and regulations.

2. Investors of one of the Contracting Parties shall have the right of access to the investment activities, in the territory of the other Contracting Party, in accordance with the legislation of the latter Contracting Party, not less favourable than the one granted as per Article 3.1.

3. Both Contracting Parties shall at all time ensure just and fair treatment of the investments of investors of the other Contracting Party. Both Contracting Parties shall ensure that the management, maintenance, use, transformation, enjoyment or assignment of the investments effected in their territory by investors of the other Contracting Party, as well as the legal persons, in particular but not exclusively, companies and enterprises, in which these investments have been effected, shall in no way be subject to unjustified or discriminatory measures.

4. Each Contracting Party shall create and maintain in its territory favourable economic and legal conditions in order to permit investments of investors of the other Contracting Party in accordance with its legislation, including the compliance, in good faith, of all undertakings assumed with regard to each specific investor.

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 investors or investors of Third States.

2. If international obligations in force or that may come into force in the future for one of the Contracting Parties, contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than the one provided for by the present Agreement, such rules will, to the extent that they are more favourable, prevail over the present Agreement.

3. The provisions under point 1 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 its membership of a Customs or Economic Union, of a Common Market, of a Free Trade Area, of a regional or sub regional Agreement, of an international multilateral economic Agreement or under Agreements stipulated in order to prevent double taxation or to facilitate cross-border trade.

Article 4. Compensation for Damages or Losses

Should investors of one of the 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 which the investment has been effected shall offer adequate compensation in respect of such losses or damages, whether or not such losses or damages have been caused by governmental forces. Compensation payments shall be freely transferable without undue delay. The investors concerned shall receive the same treatment as the nationals of the other Contracting Party and, at all events, no less favourable than the one accorded to investors of Third States.

Article 5. Expropriation

1. Investments of investors of either Contracting Party shall not be, "dejure" or "de facto", expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred as "expropriation") in the territory of the other Contracting Party except for a public purpose and national interest.

The expropriation shall be carried out under due process of law, on a non-discriminatory basis and in exchange of the payment of prompt, adequate and effective compensation.

Such compensation shall be equivalent to the market value of the investment expropriated immediately prior to the moment in which the decision of expropriation has been announced.

The exchange rate applicable to any such compensation shall be that prevailing on the date immediately prior to the moment in which the decision of expropriation has been announced.

The compensation shall include interest calculated on the LIBOR basis from the date of expropriation to the date of payment, shall be made without delay and in any case within three months, shall be effectively realizable and shall be freely transferable in convertible currency.

2. In the absence of an understanding between the host Contracting Party and the investor concerning the amount of the compensation, the latter shall be based on the same reference parameters taken into account in the documents for the constitution of the investment.

3. The provisions of this Article shall also apply when a Contracting Party expropriates the assets of a company, which is incorporated or constituted under the law in force in its territory, and of which investors of the other Contracting Party own shares.

In case that the object of expropriation is a legal person jointly created by Armenian and Italian investors, the evaluation of the share of the investor will be, in the currency of the investment, not lower than the starting value, increased by capital increases and revaluation of capital, undistributed profits and reserve funds, and diminished by the value of capital reductions and losses.

4. An investor of either Contracting Party that asserts that all or part of its investment has been affected by expropriation shall have the right to a prompt review by the competent judicial or administrative authorities of the other Contracting Party in order to determine whether such measure has occurred and, if it has, whether such measure and any compensation thereof conform to the provisions of this Agreement and to the principles of international law, and in order to decide all other relevant matters.

5. Compensation will be considered as actual if it has had been paid in the same currency in which the investment has been made by the foreign investor, in so far as such currency is — or remains — convertible, or, otherwise, in any other currency accepted by the investor. Compensation will be freely transferable.

6. The provisions of this Article shall also apply to profits accruing to an investment and, in the event of winding-up, the proceeds of liquidation.

7. If, after the dispossession, as a consequence of expropriation, the assets concerned have not been utilized, wholly or partially, for that purpose, the owner or his assignees are entitled to the repurchasing of the assets at market price.

Article 6. Repatriation of Capital, Profits and Income Related to an Investment

1. Each of the Contracting Parties shall guarantee that the investors of the other Contracting Party may transfer abroad amounts related to investments, without undue delay, in any convertible currency. Such transfers shall include in particular though not exclusively:

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

b) Net income, dividends, royalties, fees, interests and other profits;

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

d) 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 prescribed by the national legislation and regulations in force.

2. Each of the Contracting Parties shall grant the investors of the other Contracting Party the conditions for transferring abroad, without undue delay, in any convertible currency, funds to repay loans connected to an investment and the payment of the related interests.

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

Article 7. Subrogation

In the event that one Contracting Party or its institution thereof has provide 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 recognize the assignment of the rights of the investor to the first-named Contracting Party or its Institution thereof.

Article 8. Transfer Procedures

1. The transfers referred to in Article 4, 5, 6 and 7 shall be effected without undue delay and, at all events, within six months after all fiscal obligations have been met, and shall be made in a convertible currency. All the transfers shall be made at the prevailing exchange rate applicable on the date on which the investor applies for the related transfer, with the exception of the provisions under paragraph 1 of Article 5 concerning the exchange rate applicable in case of one of the measures referred to in paragraph 2 of Article 5.

2. The fiscal obligations under the previous paragraph are deemed to be complied with when the investor has fulfilled the proceedings provided for by the law of the Contracting Party on the territory of which the investment has been carried out.

Article 9. Settlement of Disputes between Investors and Contracting Parties

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

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

3. In the event that such dispute cannot be settled amicably within six months from the date of the written application for settlement, the investor may submit at his t 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 United Nations Commission on the International Trade Law (UNCITRAL). The host Contracting Party undertakes hereby to accept the said arbitration.arbitration regulation of the United Nations Commission on the International Trade Law (UNCITRAL). The host Contracting Party undertakes hereby to accept the said arbitration.

c) The International Centre for Settlement of Investment Disputes, for the implementation of the arbitration procedures under the Washington Convention of 18 March 1965, on the settlement of investment disputes between States and nationals of other States, if or as soon as both the Contracting Parties have acceded to it.

4. Both Contracting Parties shall refrain from negotiating through diplomatic channels any matter relating to an arbitration procedure or judicial procedures underway until these procedures have been concluded, and 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 provisions which can be applied to the case.

Article 10. 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 amicably through diplomatic channels.

2. In the event that the dispute cannot be settled within six 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 the Contracting Parties, 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 moment on which the request for arbitration is received, each of the two Contracting Parties shall appoint a member of the Tribunal. The two members shall then choose a national of a Third State to serve as President. 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 appointments have not been made, each of the two Contracting Parties can, in default of other arrangement, 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 it is, for any

reason, 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 is unable to make the appointment 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 appointment.

5. The Arbitration Tribunal shall rule with a majority vote, and its decisions shall be binding on both Contracting Parties. Each Contracting Party shall pay the costs of its own member of Tribunal and of its representatives at the hearings. The President's costs and any other cost shall be divided equally between the Contracting Parties. The Arbitration Tribunal shall lay down its own procedures.

Article 11. Application of other Provisions

1. If a matter is governed both by this Agreement and by another International Agreement to which both Contracting Parties are signatories, or by general international law provisions, the most favourable provisions 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 a specific contract or investment authorisations or an investment agreement, is more favourable than that provided under this agreement, the most favourable treatment shall apply.

Whenever, after the date when the investment has been made, any modification of protection conditions extended to investments should take place in the legislation of the Contracting Party on whose territory the investment has been carried out, the protection granted under previous legislation will not be affected.

Article 12. Entry Into Force

This Agreement shall become effective as from the date in which the two Contracting Parties notify each other that their respective internal procedures have been completed.

Article 13. Amendments

Amendments to the provisions of this Agreement may be agreed upon by the Contracting Parties. Such amendments shall become effective as from the date in which the Contracting Parties have notified each other that all respective internal procedures for their entry into force have been completed.

Article 14. Duration and Termination

1. This Agreement shall remain effective for a period often years from the date of the notification under Article 12 and shall remain in force for a further period of five years thereafter, unless one of the two Contracting Parties withdraws in writing by not later than one year before its termination date.Article 12 and shall remain in force for a further period of five years thereafter, unless one of the two Contracting Parties withdraws in writing by not later than one year before its termination date.

2. In case of investments effected prior to the termination dates, as provided under paragraph 1 of this Article, the provisions of the Articles 1 to 11 shall remain effective for a further five years after the aforementioned dates.paragraph 1 of this Article, the provisions of the Articles 1 to 11 shall remain effective for a further five years after the aforementioned dates.

Done in Rome. this 23 of July 1998, in two originals, in Italian, in Armenian and in English languages, all texts being equally authentic. In case of any divergence, the English text shall prevail.

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC

FOR THE GOVERNMENT OF THE REPUBLIC OF ARMENIA

PROTOCOL

On signing the Agreement between the Government of the Italian Republic and the Government of the Republic of Armenia on the Promotion and Protection of Investments, the Contracting Parties also agreed on the following clauses, which shall be deemed to form an integral part of the Agreement.

1. Activities Connected with Investments

The provisions of this Agreement shall also apply to all the activities connected with an investment.

These activities shall include in particular, but not exclusively: the organization, control, operation, maintenance and disposition of companies, branches, agencies, offices, factories or other facilities for the conduct of business; the making and performance of contracts; the acquisition, use, protection and disposition of property of all kinds including intellectual property; the borrowing of funds; the purchase, issuance and sale of equity shares and other securities; and the purchase of currency for imports.

2. With Reference to Article 2

a) A Contracting Party (or its agencies or instrumentalities) may stipulate with investors of the other Contracting Party, who carry out investment of national interest in the territory of the Contracting Parties, an investment agreement which will govern the specific legal relationship related to said investment.

b) Neither of the Contracting Parties will set any condition for the creation, the expansion or the continuation of investments, which may imply the taking over or the imposing of any limitation to, the sale of the production on domestic and international markets, or which specifies that goods must be procured locally, or similar conditions.

c) Each Contracting Party will provide effective means of asserting claims and enforcing rights with respect to investments and investment agreements.

d) The nationals of either Contracting Party authorised to work in the territory of the other Contracting Party in connection with an investment as per this Agreement, shall have the right to adequate working conditions for the carrying out of their professional activities, in accordance with the legislation of the host Contracting Party.

e) According to its laws and regulations, each Contracting Party shall govern as favourably, as possible the problems connected with the entry, stay, work and movement in its territory of nationals of the other Contracting Party, and members of their families, performing activities related to investments under this Agreement.

f) Legal persons constituted under the applicable laws or regulations of one Contracting Party, 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 nationalily, in accordance with the legislation of the host Contracting Party.

3. With Reference to Article 3

All the activities related to the procurement, sale and transport of raw and processed materials, energy, fuels and production means, as well as any other kind of operation related to them and linked to investment activities under this Agreement; shall be accorded in the territory of each Contracting Party, no less favourable treatment than the one accorded to similar activities and initiatives taken by inv'estors of the host Contracting Party or investors of Third States.

4. With Reference to Article 5

Any measure undertaken towards an investment effected by an investor of one of the Contracting Parties, which substracts financial resources or other assets from the investment or causes substantial prejudice to the value of the same investment, as well as any other measure having equivalent effect, will be considered as one of the measures referred to in paragraph 1 of Article 5.

5. With Reference to Article 9

Under Article 9 (3) (b), arbitration shall be conducted in accordance with the arbitration standards of the United Nations Commission on International Trade Law (UNCITRAL) as well as pursuant to the following provisions:

a) 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.

The appointment of arbitrators, whlon necessary pursuant to the UNCITRAL Rules, will be made by the President of the Arbitration Institute or the Stockholm Chamber. in his capacity as Appointing Authority. The arbitration will take place in Stockholm. unless the two parties in the arbitration have agreed otherwise.

b) When delivering its decision, the Arbitration Tribunal shall in any case apply also the provisions contained in this Agreement. as well as the principles of international law recognized by the two Contracting Parties.

The recognition and implementation of the arbitration decision in the territory of the Contracting Parties shall be governed by their respective national legislation, in compliance with the relevant International Conventions they are parties to.

Done in Rome, on this 23 of July 1998, in two originals, in Italian and Armenian and in English languages, all texts being equally authentic.

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

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC

FOR THE GOVERNMENT OF THE REPUBLIC OF ARMENIA