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## AGREEMENT ON THE PROMOTION AND THE RECIPROCAL Protection of investments between the government OF

The REPUBLIC OF CYPRUS AND THE GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRYA

The Government of the Republic of Cyprus and the Great Socialist People's Libyan Arab Jamahiriya, hereinafter referred to as "The Contracting Parties".

Desiring to intensify their economic cooperation for the mutual benefit of both countries, by creating favourable conditions for investments made by investors of each Contracting Party in the territory of the other Contracting Party and

Recognizing that the mutual promotion and protection of investments will stimulate initiatives and economical cooperation between the two countries, have agreed as follows:

### Article 1. Definitions

For the purpose of implementing this Agreement, the following terms should be defined:

1. "Investments": every kind of assets invested, in connection with economic activities by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter and in particular, although not exclusively, the following:

- (a) Movable and immovable property and any other property rights such as mortgages, liens, pledges, leases and similar rights.
- (b) Shares in companies, stocks and debentures of a company or any other form of participation in a company or business enterprise.
- (c) Claims to money or to any performance under contract having economic value and associated with an investment.
- (d) Intellectual property rights, technical processes, know-how and goodwill, including copyrights, patents, and rights of inventions, signs, secrets and business names, designs and manufacturing procedures and technical knowledge.
- (e) Any rights conferred by law or by virtue of a contract, including concessions to search for, cultivate, extract or exploit natural resources.

Investments made in the territory of one Contracting Party by any legal entity of that same Contracting Party which is actually owned or controlled by investors of the other Contracting Party shall likewise be considered as investments of investors of the latter Contracting Party if they have been made in accordance with the laws and regulations of the former Contracting Party.

Any change in the form of the assets that are invested or reinvested does not affect their character as investments.

2. "Investor" with regard to either Contracting Party:

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-- Any natural person having the citizenship of that Contracting party in accordance with its law;

-- Any legal person constituted or incorporated in compliance with the law of that Contracting Party and having their seat in the territory of the same Contracting Party;

Who, in compliance with this Agreement, are making investments in the territory of the other Contracting Party.

3. "Territory" designates the land territory and territorial waters of each of the Contracting Parties, as well as the exclusive economic zone and the continental shelf that extend outside the limits of the territorial waters of each of the Contracting Parties over which they have or may have jurisdiction and/or sovereign rights, pursuant to international law.

4. "Returns": The amounts yielded by an investment and includes profits, interests dividends, capital gains, royalties, fees and all related proceeds.

5. "Freely Convertible Currency": Any freely convertible currency that is used in international trade and is acceptable in international currency markets.

## **Article 2. Promotion and Protection of Investments**

For the purpose of implementing this Agreement,

1. Each Contracting Party shall encourage investments and create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

2. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security according to the law. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, expansion or disposal of such investments.

## **Article 3. National Treatment and Most Favoured Nation Treatment**

1. Once a Contracting Party has admitted an investment in its territory in accordance with its laws and regulations, it shall accord to such investment made by investors of the other Contracting Party treatment not less favourable than that accorded to investments of its own investors or of investors of any third State, whichever is more favourable to the investor concerned.

2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards to their management, maintenance, use, enjoyment, expansion or disposal of their investment, treatment not less favourable than that accorded to its own investors or to investors of any third State, whichever is more favourable to the investors concerned.

3. The treatment granted under this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party and their investments the benefit of any treatment, preference or privilege resulting from:

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(a) Any membership to any existing or future customs union, economic union, monetary union or any other regional economic integration organization and

(b) Any international agreement or arrangement relating wholly or mainly to taxation.

4. The treatment referred to in paragraphs 1 and 2 of this Article will be granted on the basis of reciprocity.

5. Nothing in this Agreement shall prevent either Contracting Party from applying new measures adopted within the framework of one of the forms of regional cooperation referred to in paragraph 3(a) of this Article which replace the measures previously applied by that Contracting Party.

## **Article 4. More Favourable Terms**

1. If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than that provided for by this Agreement, such regulation shall, to the extent that it is more favourable, prevail over this Agreement.

2. More favourable terms than those of this Agreement which have been agreed to by one of the Contracting Parties with investors of the other Contracting Party shall not be affected by this Agreement.

## **Article 5. Compensation for Losses and Damages**

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or to armed conflict, state of national emergency, revolution, insurrection, civil disturbance or any other similar event, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other settlement, treatment not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State whichever is more favourable to the investor concerned. Resulting payments shall be freely transferable.

2. Notwithstanding paragraph 1, an investor of one Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in the territory of the other Contracting Party resulting from

(a) requisitioning of its investment or part thereof by the latter's forces or authorities;

Or

(b) destruction of its investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation, shall be accorded by the latter Contracting Party restitution or compensation which in either case shall be prompt, adequate and effective. Resulting payments shall be made without delay and be freely transferable.

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## **Article 6. Freedom of Transfers**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of all payments related to their investments abroad, and in the same currency in which it was made or any other freely convertible currency. Such transfers should be totally free, and with no delays, and shall include, in particular, though not exclusively:

(a) the initial capital and additional amounts of profits, and any other related

Amounts

(b) investment returns including the income gained from the investment

(c) proceeds from total or partial sale or liquidation of an investment

(d) funds in repayment of loans related to an investment, or arising out of the settlement of a dispute

(e) compensations provided for under Articles 5 and 7

(f) suitable amount of earnings and other remuneration of personnel engaged from abroad in connection with an investment

(g) payments arising out of the settlement of a dispute.

2. Transfers under the present Agreement shall be made without delay, in a freely convertible currency at the market rate of exchange prevailing on the date of transfer.

## **Article 7. Expropriation**

1. Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated or subjected to measures having equivalent effect to nationalization or expropriation, except for public interest, in accordance with due process of law, on a non-discriminatory basis and against the payment of prompt, adequate and effective compensation.

2. Such compensation shall amount to the fair market value of the investment expropriated immediately before the expropriation or impending expropriation became publicly known, whichever is the earlier (hereinafter referred to as the "valuation date").

3. Such market value shall be calculated in a freely convertible currency at the market rate of exchange prevailing for that currency on the valuation date. Compensation shall include interest calculated on the basis of the 6-month LIBOR rate applicable on the date of expropriation, from the date of expropriation until the date of payment. Compensation shall be

paid without delay, be effectively realizable and freely transferable.

4. The investor affected shall have the right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial authority or other competent and independent authority of that Contracting Party, of its case, including the valuation of its investment and the payment of compensation, in accordance with the principles set out in this Article.

5. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the

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Provisions of this Article are applied so as to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

## **Article 8. Subrogation**

If one Contracting Party or its designated Agency makes a payment under an indemnity, guarantee or contract of insurance against non-commercial risks given in respect of an investment made by any of its investors in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment of any right or claim of such investor to the former Contracting Party or its designated Agency and the right of the former Contracting Party or its designated Agency to exercise, by virtue of subrogation, any such right and claim to the same extent as its predecessor in title. This subrogation will make it possible for the former Contracting Party or its designated Agency to be the direct beneficiary of any payment for indemnification or other compensation to which the investor could be entitled.

## **Article 9. Settlement of Disputes between One of the Contracting Parties and Investors of the other Party**

1. Disputes that may arise between one of the Contracting Parties and an investor of the other Contracting Party with regard to an investment in the sense of the present Agreement shall be notified in writing, including a detailed information, by the investor to the former Contracting Party. As far as possible, the parties concerned shall endeavour to settle these disputes amicably.

2. If it is not possible to settle the dispute in this way within six months from the date of the written notification, it shall be submitted, at the choice of the investor concerned to:

(a) the competent court of the Contracting Party in whose territory the investment was made; or

(b) the Arbitral Tribunal of the International Chamber of Commerce in Paris; or

(c) the International Centre for the Settlement of Investment Disputes (ICSID) established by the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States; or

(d) the Arbitration Institute of the Arbitral Tribunal of the Chamber of Commerce in Stockholm.

3. During arbitration proceedings or the enforcement of the award, a Contracting Party involved in the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of the damage.

4. The arbitral tribunal shall issue its decision in accordance with the provisions of this Agreement, other relevant agreements in force between the Contracting Parties, the applicable rules and principles of international law and the domestic law of the Contracting Party provided that it does not conflict with the rules of international law.

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5. The awards of arbitration shall be final and binding on both Parties to the dispute. The Contracting Party shall carry out without delay any such award and such award shall be enforced in accordance with domestic law.

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

1. Any dispute between the two Contracting Parties relative to the interpretation or application of this Agreement shall as far as possible be settled through diplomatic channels.

2. If it is not possible to settle the dispute in this way within six months from the start of the negotiations, it shall be submitted, at the request of either of the two Contracting Parties, to an arbitral tribunal.
3. The arbitral tribunal shall be set up in the following way: Each Contracting Party shall appoint one arbitrator and these two arbitrators shall select a national of a third country as Chairman. The arbitrators shall be appointed within three months and the Chairman within five months from the date on which either of the two Contracting Parties informed the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.
4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is 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 necessary appointments. If the Vice-President is a national of either Contracting Party or if he too 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 necessary appointments.
5. Chairman of the arbitral tribunal shall be a national of a third state with which both Contracting Parties maintain diplomatic relations.
6. The arbitral tribunal shall issue its decision in accordance with the provisions of this Agreement, other relevant agreements in force between the Contracting Parties and the applicable rules and principles of international law and the domestic law of the contracting party provided that it does not conflict with the rules of international law. Also, it shall reach its decision by a majority of votes and that decision shall be final and binding on both Contracting Parties.
7. Unless the Contracting Parties decide otherwise, the arbitral tribunal shall lay down its own procedure.
8. Each Contracting Party shall bear the expenses of its own arbitrator and those connected with representing it in the arbitration proceedings. The other expenses, including those of the Chairman, shall be borne in equal parts by the two Contracting Parties.

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## **Article 11. Scope of Application**

This Agreement shall apply to all investments made by investors of either Contracting Party, whether existing at or made after the date of its entry into force. It shall not, however, apply to disputes that have arisen before the entry into force of the present Agreement.

## **Article 12. International Commitment**

Either contracting party should not be prevented from taking measures to fulfil its obligations in accordance with international order regarding peace and security and the European Union.

## **Article 13. Entry Into Force and Termination**

1. This Agreement shall enter into force on the date on which the Contracting Parties shall have notified each other that their respective constitutional formalities required for the entry into force of international agreements have been completed.
2. This Agreement shall remain in force for a period of ten (10) years, which shall be extended for equal periods, unless, twelve (12) months before the expiration of the period, either Party notifies the other in writing and by diplomatic channels of its intention to terminate the Agreement.
3. This Agreement shall not prejudice the right of either of the Contracting Parties to request an amendment in whole or in part or to terminate this Agreement at any time during its period of validity.
4. In such an eventuality, if the Contracting Parties do not reach agreement on any modification to or termination of this Agreement within six months after a written request by the Contracting Party seeking such modification or termination to the other Contracting Party, the Party that had made the said request shall be entitled to denounce the whole Agreement within thirty (30) days from the lapse of the said six (6) months period. Such denunciation shall be made through diplomatic channels and shall be considered as a notice of termination of this Agreement. In such a case the Agreement shall terminate six (6) months after the date of receipt of the said notice by the other Contracting Party, unless such notice is withdrawn by

mutual agreement before the expiry of this period of the notice.

5. With respect to investments made prior to the date of the amendment or termination of this Agreement in accordance with this Article, the provisions of all of the other Articles of this Agreement shall thereafter continue to be effective for a further period of ten years from such date of amendment or termination.

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In witness whereof, the respective plenipotentiaries have signed this Agreement. Done in Tripoli in two originals on the 30th of June 2004 in Greek, Arabic, and English, all of which are equally authentic. In case of any divergence of interpretation the English text shall prevail.

For the Government of the Republic of Cyprus:

H.E. M r. A rgyros A ntoniou Ambassador of the Republic of Cyprus

For the Great Socialist People's Libyan Arab Jamahiriya:

H.E. M r. M ohamed T aher H. S iala Assistant Secretary for Cooperation