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

The Government of the United Republic of Tanzania and the Government of the Italian Republic (hereafter defined as "The Contracting Parties");

Desiring to create favourable conditions for investments by nationals and companies of one State in the territory of the other State;

Recognising that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both States;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1. The term "investment" shall mean any kind of asset invested by a natural or legal person of a Contracting Party in the territory of the other Contracting Party, in conformity with the laws 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" comprises in particular, but not exclusively: a) Movable and immovable property and any ownership right in rem, including real guarantee rights of a third Party, to the extent that it can be invested;

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

c) Credits for sums of money or any service right 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 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.

A change in the form in which assets are invested does not affect their character as investments.

2. The term "investor" shall mean any natural or legal person of a Contracting Party investing in the territory of the other Contracting Party as well as the foreign subsidiaries, affiliates and branches controlled in anyway by the above natural and legal persons.

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 having its head office in the territory of one of the Contracting Parties and recognised by it, such as public institutions, corporations, partnerships, foundations and associations, regardless of whether their liability is limited or otherwise.

5. The term "income" shall mean the money accruing to an investment, including in particular profits or interests, interest income, capital gains, dividends, royalties or payments for assistance or technical services and others as well as any

considerations in kind such as, but not exclusively, raw materials. produces or products, livestock.

6. The term "territory" shall mean, in addition to the zones contained within the land boundaries, the "maritime zones". The latter also comprises the marine and submarine zones over which the Contracting Parties exercise sovereignty and sovereign or jurisdictional rights under international law.

7. 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 legal relationships concerning the investment.

Article 2. Promotion and Protection of Investment

1. Each Contracting Party shall encourage and create favourable conditions for nationals or companies of the other Contracting Party to invest capital in its territory, and, subject to its right to exercise powers conferred by its laws, shall admit such capital.

2. Each Contracting Party shall create and maintain in its territory a legal system guaranteeing that investments of nationals or companies of the other Contracting Party shall at all-time be accorded fair and equitable treatment and shall enjoy full protection and security as accorded to the residents in its territory. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, transformation, enjoyment or disposal of investments and activities connected to their operations in its territory of nationals and companies of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party.

3. Subject to the laws and regulations relating to the entry and sojourn of aliens, investors or individuals working for an investor of one Contracting Party, as well as members of their household, shall be permitted to enter into, work remain on and leave the territory of the other Contracting Party for the purpose of carrying our activities associated with investments in the territory of the latter Contracting Party.

Article 3. National Treatment and Most-favored-nation Provisions

1. Neither Contracting Party shall in its territory subject investments or returns of nationals or companies of the other Contracting Party to a treatment less favourable than that which it accords to investments or returns of its own nationals or companies or to investments or returns of nationals or companies of any third State.

2. Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their management, maintenance, use, transformation, enjoyment or disposal of their investments and activities connected to their operations, to treatment less favourable than that which it accords to its own nationals or companies or to nationals or companies of any third State.

3. In exception to the principle of the national treatment established in paragraph (1) of this article, in the case of the United Republic of Tanzania limited incentives granted only to its nationals and companies in order to stimulate the creation of local industries are considered compatible with this article provided they do not significantly affect the investment and activities of nationals and companies of the other Contracting Party in connection with an investment. Subject to the strengthening of the capacity of local industries, the United Republic of Tanzania shall eliminate progressively such special incentives.

Article 4. Compensation for Losses

1. National or companies of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own nationals or companies or to nationals or companies of any third State. Resulting payments shall be freely transferable abroad within the provisions of the Laws of the Contracting Parties.

2. Without prejudice to paragraph (1) of this Article, nationals and companies of one Contracting Party who in any of the situations referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from;

a) Requisitioning of their property by its forces or authorities; or

b) Destruction of their property by its forces or authorities, which was not caused in combat action or was not required by the necessity of the situation, as denned by international law,

Shall be accorded restitution or adequate compensation. Resulting payments shall be freely transferable abroad.

Article 5. Nationalisation or Expropriation

1. The investments to which this Agreement relates shall not be subject to any measure which might limit the right of ownership, possession, control or enjoyment of the investments, permanently or temporarily, unless specifically provided by current, national or local, legislation and regulations and orders indeed down by Courts or Tribunals having jurisdiction.

Investments of nationals or companies of either Contracting Party shall be, "de jure" or "de facto", nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, kept for a public purpose related to the internal needs of that Party on a non-criminatory basis and against prompt, full and effective compensation. Such compensation shall amount to the genuine market value of the investment appropriated immediately before the expropriation or before the impending Appropriation became public knowledge, whichever is the earlier, shall be calculated in a convertible currency at the prevailing exchange rate applicable on the date on which the decision to nationalise or expropriate is announced or made public, shall include interests calculated on the basis of London inter-banking Offered Rate (LIBOR) Standards from the date of expropriation to the date of payment, shall be made without delay and in any case within six months be effectively realizable and be freely transferable. Whenever there are difficulties in ascertaining the genuine market value, it shall be determined according to the internationally acknowledged evaluation standards. The national or company affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

2. 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 nationals or companies of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (2) of this Article are applied to the extent necessary to guarantee prompt, full and effective compensation to such nationals or companies of the other Contracting Party taking into account their share in the company as specific in the company's basic documents.

3. If, after dispossession, the expropriated investment has not been utilised, wholly or partially, for that purpose, the owner or his or its assignees are entitled to repurchase it at the market price.

Article 6. Repatriation of Investment and Returns

1. Each Contracting Party shall in respect of investments guarantee to nationals or companies of the other Contracting Party, after all fiscal obligations have been mes, the unrestricted transfer of their investments and returns, funds to repay loans and interests connected to an investment and incomes deriving from the total or partial sale or liquidation of an investment. Transfers shall be effected without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the investor and the Contracting Party concerned. Unless otherwise agreed by the investor transfers shall be made at the prevailing rate of exchange applicable on the date on which the investor applies for the related transfer, with the exception of the provisions under point (2) of Article (5) concerning the exchange rate applicable in case of nationalisation or expropriation.

The fiscal obligations under the previous paragraph are deemed to be complied with when the investor has fulfilled the procedure provided for by the legislation of the Contracting Party on which territory the investment has been carried out. Each Contracting Party shall guarantee that nationals of the other Contracting Party can transfer abroad without undue delay remunerations and allowances paid to them in respect of authorised work and services performed in relation to an investment effect in the territory of the other Contracting Party.

Article 7. Exceptions

The provision of this Agreement relative to the grant of treatment not less favourable than that accorded to the nationals or companies of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the other the benefit of any treatment, preference or privilege resulting from:

a) Any existing or future custom of economic union, common market, free trade area, regional or sub-regional agreement, international economic agreement to which either of the Contracting Parties is or may become a Party, or

b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating to cross border trade or wholly or mainly to taxation.

Article 8. Settlement of Disputes between Investors and Contracting Parties

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 through consultations and negotiations, as far as possible.

In the event that such dispute cannot be settled as provided in paragraph 1) of this Article within six months of 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 UNCITRAL arbitration rules;

c) The International Centre for the Settlement of Investment Disputes, in accordance with the rules of the Centre (ICSID).

a) In case of arbitration conducted under Article 8 (2) (b), the Arbitration Tribunal shall be composed of three arbitrators appointed in accordance with Article 7 of UNCITRAL rules.

b) The seat of arbitration shall be Stockholm, Sweden, or any other place as the Arbitrators may, with consent of the parties, agree.

4. When delivering its decisions, 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. 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.

5. The language of arbitration shall be English.

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

7. Neither Contracting Party shall pursue through the diplomatic channel any dispute referred to the Centre (ICSID) or an Arbitration Tribunal unless:

a) The Secretary General of the Centre or an Arbitration Tribunal decides that the dispute is not within their jurisdiction, or

b) The other Contracting Party should fail to abide by or to comply with any award rendered by an Arbitration Tribunal.

Article 9. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through the diplomatic channel

2. If a dispute between the Contracting Parties cannot thus be settled within six months of the date on which one of the Contracting Parties notifies, in writing, the other Contracting Party, it shall upon the request of either Contracting Party be submitted to an Arbitration Tribunal.

3. Such an Arbitration Tribunal shall be constituted for each individual case in the following way. With two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

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 Courts of Justice to make any necessary appointments. If the president is 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. The Arbitration Tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting

Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

Article 10. Subrogation

1. If one Contracting Party or its designated Agency makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party or its designated Agency by law or by legal transaction of all the rights and claims of the Party indemnified, and that the Former Contracting Party or its designated Agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the Party indemnified.

2. The former Contracting Party or its designated Agency shall be entitled all circumstances to the same treatment in respect of the rights and claim acquired by it by virtue of the assignment and any payment received pursuance of those rights and claims as the Party indemnified was entitled receive by virtue of this Agreement in respect of the investment concerned and its related returns.

3. Any payment received in non-convertible currency by the former Contracting Party or its designated Agency in pursuance of the rights and claim acquired shall be freely available to the former Contracting Party for the purpose of meeting any expenditure incurred in the territory of the latter Contracting Party.

Article 11. Application of other Rules

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

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

3. Whenever, after the date when the investment has been made, a modification should take place in laws, regulations, acts or measures of economic policies governing directly or indirectly the investment, the same treatment will apply upon request of the investor that was applicable to it at the moment when the investment had been carried out.

Article 12. Implementation of the Agreement

This Agreement is also valid for investments that investors of one Contracting Party have done in accordance with the regulations of the other Contracting Party in its territory before the entering into force of this Agreement. It will not be applied to disputes that arose before the entering into force of the present Agreement.

Article 13. Relations between Governments

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

Article 14. Entry Into Force

The Contracting Parties shall notify each other when their respective constitutional requirements for entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the date of receipt of the last notification.

Article 15. Duration and Termination

This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other. Provided that in respect of investments made whilst the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of twenty years after the date of termination and without prejudice to the application thereafter of the rules of general international law,

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

Done at Dar-es-Salaam, this 21st day of August 2001, in two originals, each in the Italian and English languages, all texts being equally authentic.

For the Government of the Italian Republic

For the Government of the United Republic of Tanzania

The Ministry of Foreign Affairs and International Co-operation of the United Republic of Tanzania presents its compliments to the Embassy of the Republic of Italy and has the honor to refer to the Agreement between the Government of the United Republic of Tanzania and the Government of the Republic of Italy on the promotion and protection of investments.

The Ministry would like to inform the esteemed Embassy that the Government of the United Republic of Tanzania has fulfilled the constitutional requirements for entry into force of this Agreement.

As stipulated under Article 14 of the agreement, a party that has fulfilled the constitutional requirements for entry into force of the Agreement should inform the other party by exchange of diplomatic note. It is on this pretext that the Government of the United Republic of Tanzania is sending this notification.

The Ministry of Foreign Affairs and International Co-operation of the United Republic of Tanzania avails itself of this opportunity to renew to the Embassy of the Republic of Italy the assurance of its highest consideration.

Dar es Salaam, 27th September, 2002

Embassy of the Republic of Italy

DAR ES SALAAM