Agreement between the Italian Republic and the Great Socialist People's Libyan Arab Jamahiriya on the investment promotion and protection

The Italian Republic and the Great Socialist People's Libyan Arab Jamahiriya, hereinafter referred to as the Contracting Parties,

REAFFIRMING the spirit and the provisions of the text of the Joint Declaration signed in Rome on July 4, 1998;

MOTIVATED by the desire to overcome the negative experiences of the past and to achieve the objectives set forth within the framework of economic and commercial cooperation in the interest of the two friendly peoples;

DESIRING to create a favorable environment for investments made by investors in the territory of the other Contracting Party; and

RECOGNIZING the importance of the promotion and protection of investments, based on international agreements, for the achievement of economic prosperity for both Contracting Parties,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement, the following terms shall have the meanings set forth below:

1. "Investments" means all types of assets invested, either before or after the Agreement, including, for example:

a. Ownership of movable and immovable property or other property rights, real estate mortgages, encumbrances, or security interests;

b. Stocks, bonds, securities, and ownership interests in companies;

c. Rights to sums of money or other rights having economic value associated with an investment, as well as rights to any commitment of monetary value;

d. Industrial or intellectual property rights, including copyrights, publication rights, and patents for inventions, trade names and trademarks, industrial designs, trade secrets, and technical industrialization processes, technologies, and trade names;

e. Rights to economic activities conferred by law or by contract, including concessions for the prospecting of natural resources, their extraction, exploitation, and development;

f. All investments consistent with the legislation of the two contracting parties, their economic policies, and their production systems, taking due account of any changes in the invested capital invested, so as not to affect the classification of such capital, provided that such a change does not prejudice the approvals originally granted for the invested capital.

2. "Income" means amounts derived from the investment, including, in particular: profits, income from use or enjoyment, dividends, royalties, and other compensation.

3. "Investor" means:

a. Any natural person who is a national of one of the two Contracting Parties;

b. Any legal entity having its principal place of business in the territory of one of the Contracting Parties and recognized by it, whether it be a company, an affiliate or foreign subsidiary, a cooperative, an enterprise, or consortium, organization, association, institution, or entity, or any enterprise or institutional project established in accordance with the applicable laws of the two Contracting Parties;

4. “Territory” means the territory of each of the two Contracting Parties, whether on land or at sea, including the seabed, the subsoil, and the airspace above it, over which each Contracting Party exercises its sovereignty and jurisdiction under international law;

5. “Freely usable currency” means any currency that is convertible at the official exchange rate, usable for making payments in international commercial transactions, and that is traded on the major international foreign exchange markets.

Article 2. Promotion and Protection of Investments

1. The two Contracting Parties shall work, in order to achieve the objectives of this agreement, to strengthen and deepen their mutual cooperation in the areas of the promotion, safeguarding, and protection of investments by all available means and opportunities.

2. The two Contracting Parties shall establish investment conditions suitable for the other Contracting Party, in accordance with the laws and regulations in force and with all provisions that do not conflict with this Agreement.

3. Investments by the two Contracting Parties shall at all times enjoy equal treatment; such investments shall enjoy full and complete protection and security within the territory of the other Contracting Party in accordance with the applicable laws and regulations, to the extent that they do not conflict with this Agreement, and with international law.

Article 3. National Treatment and Most Favoured Nation Clause

1. Investments made by either Contracting Party or by one of its investors in the territory of the other Contracting Party shall enjoy favorable treatment no less favorable than that accorded to investments and income of national investors and of any other third country. Such treatment shall also apply to the management, operation, ownership, and disposal of such investments, to related activities, and to their returns, extending the benefits of promotion and protection established for capital received in accordance with the investment laws and regulations in force in the two Contracting Parties and with international agreements in force concerning investments.

2. The investments and investment returns referred to in paragraph 1 of this article shall enjoy facilities, incentives, and other forms of encouragement within the limits and under the conditions provided for by the laws of the two Contracting Parties.

3. This Agreement does not extend to the Contracting Parties the privileges of agreements—including those to avoid double taxation—economic unions, regional conventions, and free trade agreements signed by one of the Contracting Parties with third countries.

Article 4. Compensation for Damages and Losses

1. Each of the two Contracting Parties shall grant to investors of the other Contracting Party whose investments have suffered damage within its territory as a result of war, any armed conflict, or a state of emergency, rebellion, or insurrection, or other similar events, treatment that will restore the situation to its previous state by restoring what was lost or by compensating for the damages in a manner no less favorable in quantity and quality than the treatment granted by the Contracting Party to its investors or to those of a third country, whichever treatment is more favorable. Compensation payments shall be freely transferable without undue delay.

Article 5. Free Capital Transfer, Profits and Income

1. Each of the two Contracting Parties shall ensure—after the fulfillment of tax obligations freely and without delay, and in any event no later than twelve months—the transfer abroad of payments related to an investment in the same currency as the original capital or in another convertible currency:

a. Capital and additional amounts for the maintenance and growth of investments;

b. profits, dividends, royalties, technical assistance and fees, interest, and any other income derived from investments made by investors of each Contracting Party in the other Contracting Party;

c. all sums due upon the partial or total liquidation of any investment belonging to an investor of one of the two Contracting Parties in the other Contracting Party;

d. amounts for the repayment of loans related to the investment and the related interest;

e. income and earnings of nationals of the Contracting Parties employed or authorized to work in activities related to an investment in the territory of the other Contracting Party;

f. compensation referred to in Articles 4 and 6, as well as any payment due by way of subrogation pursuant to Article 7 of this Agreement;

2. The exchange rate applied to the transfers referred to in paragraph 1 of this Article shall be calculated at the official exchange rate in effect on the date on which the investor requests the relevant transfer.

3. The tax obligations referred to in paragraph 1 shall be deemed fulfilled when the investor has completed the procedures required by the law of the Contracting Party in whose territory the investment was made.

Article 6. Nationalization and Expropriation

1. The investments of either Contracting Party or of their investors in the territory of the other Contracting Party shall not be nationalized or expropriated, either directly or indirectly, except for a reason of general interest and for reasons of public utility, and provided that such measures are taken on a non-discriminatory basis, in accordance with legal provisions and procedures, and subject to prompt and effective compensation.

2. In accordance with this Agreement, the investments of either Contracting Party or those of investors of the same Contracting Parties shall not be subject to measures that restrict the right of ownership or possession, administration, or usufruct of said investments, whether permanently or temporarily, except within the limits of applicable law or pursuant to a specific judgment of the competent court.

3. Compensation shall be calculated based on the fair market value of the investment immediately prior to the expropriation decree. It shall be calculated in convertible currency at the official exchange rate applicable on the date on which the nationalization or expropriation was announced or made public.

The fair market value shall not be affected by any change in value caused by public knowledge of the expropriation proceedings prior to the decision on the measure. Such value shall be determined based on internationally recognized rules and practices. The amount of compensation shall include interest calculated based on EURIBOR rates, where appropriate, from the date of expropriation until the date of payment.

4. Compensation shall be considered effective if it has been paid in the same currency in which the foreign investor made the investment, or in any other convertible currency of the investor's choice. Compensation shall be considered timely if it is paid without undue delay and, in any event, within twelve months.

5. If the expropriation concerns a joint venture established in the territory of one of the two Contracting Parties, the amount of compensation to be paid to the investor of the other Contracting Party shall be calculated on the basis of the investor's share in such joint venture and in accordance with the provisions of its articles of incorporation.

6. If no agreement is reached between the investor and the Contracting Party hosting the investment, recourse shall be had to the procedures for the settlement of investment disputes in accordance with Article 9 of this Agreement.

7. An investor of either Contracting Party who claims that all or part of his investment has been expropriated shall be entitled to a prompt review by the competent judicial or administrative authorities of the other Contracting Party to determine whether the compensation for such expropriation complies with the laws and regulations of the expropriating Party.

8. If, following the expropriation, the property in question has not been used, in whole or in part, for public purposes, the owner or his successors in title shall be entitled to repurchase the property at market price.

Article 7. Subrogation

If a Contracting Party or one of its public institutions grants a guarantee against non-commercial risks for an investment, made by one of its investors in the territory of the other Contracting Party, the latter shall recognize the transfer of the right of such investors to the Contracting Party or its guaranteeing institution, and the subrogation shall not extend beyond the investors' original right. With regard to the transfer of payments to be made to the Contracting Party pursuant to such subrogation, Articles 4, 5, and 6 of this Agreement shall apply.

Article 8. Disputes between the Contracting Parties

1. Disputes regarding the interpretation, application, or termination of this Agreement shall be resolved through diplomatic channels.

2. If a dispute has not been resolved within six months of the date on which it was notified in writing by one of the Contracting Parties to the other Contracting Party, it shall be submitted, at the initiative of one of the Contracting Parties, to an ad hoc arbitral tribunal as provided for in the following paragraphs of this Article.

3. The Arbitral Tribunal shall be constituted, for each specific case, as follows: each Contracting Party shall appoint one arbitrator, and the two arbitrators thus appointed shall then, by mutual agreement, appoint a national of a third country who shall be designated by the two Contracting Parties as Chairman of the Arbitral Tribunal. All arbitrators shall be appointed within six months of the date on which one of the two Contracting Parties has notified the other that it intends to submit the dispute to arbitration.

4. If the time limits set forth in paragraph 3 of this Article have not been met, the Contracting Parties may, in the absence of any other agreement, request the President of the International Court of Justice to make the appointments. If the President is a national of one of the two Contracting Parties or is otherwise unable to make the appointments, the request shall be made to the Vice President. If the Vice President of the Court is also a national of one of the two Contracting Parties or, for any other reason, is unable to make the appointments, the most senior member of the International Court of Justice who is not a national of either of the two Contracting Parties shall make the appointments.

5. The Arbitral Tribunal shall decide by a majority vote. Its decisions shall be final and binding on the Contracting Parties. With regard to its procedures, the Arbitral Tribunal shall apply the UNCITRAL Rules and, with respect to the matter that is the subject of the dispute, shall apply the provisions of this Agreement and those of international law. The seat of arbitration shall be The Hague (Netherlands).

Article 9. Disputes between Investors of a Contracting Party and the other Contracting Party

1. All disputes that may arise between one of the two Contracting Parties and investors of the other Contracting Party regarding investments, including those concerning the amount of compensation, shall be settled amicably to the extent possible.

2. If an investor and an entity of one of the two Contracting Parties have entered into an agreement regarding dispute resolution, the procedure set forth in that agreement shall apply.

3. If a dispute cannot be settled amicably within six months from the date of the written request for settlement, the investor may, at its option, submit the dispute:

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

- (b) to the International Centre for Settlement of Investment Disputes (ICSID) referred to in the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, signed in Washington on March 18, 1965, provided that the Contracting Parties have acceded thereto;

- (c) to an ad hoc arbitral tribunal in accordance with the arbitration rules of the United Nations Commission on International Commercial Law (UNCITRAL). The host Contracting Party therefore undertakes to accept the reference to those arbitration rules.

Once one of the above methods of dispute resolution has been chosen, the investor may no longer pursue the other two.

4. No Contracting Party shall pursue through diplomatic channels any matter concerning judicial or arbitral proceedings until such time as the proceedings have been concluded and a Contracting Party has failed to comply with or has not implemented the decision rendered by the Judicial Authority or the Arbitral Tribunal.

Article 10. Application of other Provisions

1. If a matter is governed by both this Agreement and another international agreement to which the Contracting Parties are signatories, or by general provisions of international law, the provisions most favorable to the Contracting Parties and their investors shall apply.

2. If the treatment accorded by a Contracting Party to investors of the other Contracting Party, in accordance with its laws and regulations or other provisions or specific contracts or authorizations and agreements relating to investments, is more favorable than that accorded under this Agreement, the more favorable treatment shall apply.

3. After the date on which the investment was made, any changes to the laws, regulations, acts, or economic policy measures that govern, directly or indirectly, investments shall not be applied retroactively.

Article 11. Scope of this Agreement

1. The provisions of this Agreement shall apply regardless of whether or not the two Contracting Parties maintain diplomatic or consular relations.

2. The provisions of this Agreement shall apply to investments made or to be made prior to the entry into force of this Agreement in accordance with the laws and regulations in effect as of the date of entry into force of this Agreement.

Article 12. Entry Into Force and Duration

1. This Agreement shall enter into force on the date of the exchange of instruments of ratification in accordance with the procedures in force in the two Contracting Parties.

2. This Agreement shall remain in force for ten years and may be automatically extended for a similar period unless one of the two Contracting Parties notifies the other Contracting Party in writing, one year prior to its expiration, of its intention to terminate it or to amend its provisions. Upon the expiration of the initial 10-year period, this Agreement may be terminated at any time by either of the two Contracting Parties with twelve months' notice.

3. The provisions of this Agreement shall remain in force—even in the event of its amendment or termination in accordance with the preceding paragraph above—for investments currently in progress and falling within the scope of application of this Agreement, in accordance with its provisions, for a further period of five years from the date of termination of the Agreement.

DONE in Rome on December 13, 2000, in two original copies, in the Italian and Arabic languages, all texts being equally authentic.

FOR THE ITALIAN REPUBLIC

Lamberto Dini

Minister of Foreign Affairs

FOR THE GREAT JAMAHIRIYA POPULAR SOCIALIST ARABA

Abdurrahman Mohamed Shalgam

Secretary of the Popular Committee

General for Foreign Relations and International Cooperation