Agreement between the Government of the Italian Republic and the Government of Republic of Cabo Verde on the promotion and protection of investments

The Government of the Italian Republic and the Government of the Republic of Cabo Verde (hereinafter referred to as the Contracting Parties).

Wishing to create favorable conditions for the improvement of economic cooperation between the two countries, particularly in relation to investments by investors of a Contracting Party in the territory of the other Contracting Party.

Recognizing that mutual encouragement and mutual protection of these investments, through international agreements, will help stimulate entrepreneurial initiatives that are conducive to the prosperity of the two Contracting Parties.

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. "Investment" means, irrespective of the legal form chosen and the legal order of reference, any asset invested, before or after the entry into force of this Agreement, by a natural or moral person of a Contracting Party in the territory of the other Contracting Party, in accordance with the laws and regulations of the latter.

In this general context, the term "investment" includes in particular but not exclusively:

a) Movable and immovable property, as well as all other property rights "in rem", including, as far as it may used for investment purposes, collateral rights in rem in respect of third parties' property;

b) shares, obligations, quotas of participation and any other title of credit, as well as as well as government and public securities in general;

c) Financial claims or any other right to benefits having an economic value and relating to an investment, as well as income and capital gains;

d) Copyright, trade marks, patents, industrial designs and other intellectual and industrial property rights, know-how, commercial secrets, trade names and goodwill;

e) Any law of economic nature conferred by law or by contract, as well as any license and concession granted in accordance with the regulations in force for the exercise of economic activities, compresses the prospecting, cultivating, extraction and exploitation of natural resources;

f) Any increase in the value of the original investment.

Any change in the form in which the asset has been invested does not imply a change in its investment nature.

2. "Investor" means any natural person or company of a Contracting Party which invests in the territory of the other Contracting Party, as well as affiliates or affiliates and foreign affiliates, wholly controlled by the persons or legal entities mentioned above.

3. "Natural person" means, with reference to each Contracting Party, any natural person having the nationality of that State in accordance with its law.

4. "Legal person" means, with reference to each Contracting Party, any entity having its head office in the territory of one of the Contracting Parties and recognized by it, such as public institutions, corporations of persons or capital, foundations,

associations, independent of whether they are in limited liability or not.

5. "Income" means the sums earned or to be derived from an investment, including, in particular, profits or interests, capital gains, dividends, royalties or remuneration for technical assistance or services and other emoluments, as well as any other remuneration in kind, such as, but not limited to, raw materials, agricultural products, other industrial or farming products.

6. "Territory" means, in addition to areas within the land borders, also "maritime areas". The latter include the marine and submarine areas on which the Contracting Parties exercise their sovereignty or on which they exercise, under international law, sovereignty or jurisdiction.

7. "Investment Agreement" means an agreement between a Contracting Party (or its Agencies or Representatives) and an investor of the other Party with respect to an investment.

8. "Non-discriminatory treatment" means treatment that is favorable to at least as much the best between national treatment and that of the most favored nation.

9. "Right of access" means the right to be admitted to investing in the territory of the other Contracting Party.

Article 2. Promotion and Investment Protection

1. Each Contracting Party shall encourage investors from the other Contracting Party to make investments in its territory.

2. Investors of one of the Contracting Parties shall have the right to enter into investment activities in the territory of the other Contracting Party under conditions not less favorable than those accorded under Article 3.1.

3. The two Contracting Parties shall at all times guarantee fair and equitable access to the investments made by investors of the other Contracting Party. Each Contracting Party shall ensure that the management, maintenance, enjoyment, transformation or transfer of investments made in its territory by investors of the other Contracting Party, as well as the companies and undertakings in which such investments have been made, are not in No way obstructed by unjustified or discriminatory measures.

4. Each Party will create and maintain in its territory a legal framework to ensure the continuity of legal treatment for investors, including, in good faith, the fulfillment of all commitments made towards each individual investor.

5. The Contracting Parties shall not impose any conditions for the creation, expansion or continuation of the investment, which may imply renewal or imposition of an obligation to export the production or which specifies that the goods must be procured locally or other conditions similar.

Article 3. National Treatment and the Most Favored Nation Clause

1. Each Contracting Party shall, in its territory, accord investment and incomes of investors of the other Contracting Party a treatment no less favorable than that reserved for investment, and its income, its nationals or investors of Third States.

2. Where the law of one of the Contracting Parties, the obligations arising under international law which may or may arise in the future for one of the Contracting Parties, provide for investors of the other Contracting Party more favorable than that provided for in this Agreement, the most favorable treatment will be applied.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply to the advantages and privileges that a Contracting Party recognizes to investors of third countries as a result of its participation in a Customs or Economic Union, a Common Market, A regional or sub-regional agreement, to a multilateral economic agreement or to agreements concluded to avoid double taxation or to facilitate cross-border exchanges.

Article 4. Compensation for Damages or Losses

Where investments made by investors in either of the two Contracting Parties in the territory of the other Contracting Party suffer damages or losses due to war, other forms of armed conflict, state of emergency, civil war or other similar events, the Contracting Party in which the investment has been made will pay to the investors an adequate compensation in respect of such damages or losses, irrespective of whether they have been caused by government forces or other entities. Payments will be made without unjustified delay and may be freely transferred. Investors in question will receive the same treatment as for the citizens of the other Contracting Party: in any case, the treatment accorded to them will be no less favorable than that accorded to third-country investors.

Article 5. Nationalization or Espionage

1. Investments covered by this Agreement may not be subject to measures restricting, permanently or temporarily, the right of ownership, possession, control and enjoyment inherent in them, except where specifically provided for by applicable national law, by regulations and judgments Issued by competent courts or tribunals.

2. Investment by investors of one of the Contracting Parties shall not be "de jure" or "de facto", directly or indirectly, nationalized, expropriated, or subject to measures having similar effects in the territory of the other Contracting Party, except for public purposes or for reasons of national interest, against immediate, full and effective compensation and provided that such measures are taken on a non-discriminatory basis and in accordance with all legal provisions and procedures.

3. The right amount of compensation will be equivalent to the actual market value of the investment, immediately before the nationalization or expropriation decision has been announced or made public.

In the absence of an agreement between the host Contracting Party and the investor, the compensation shall be calculated on the basis of the international benchmarks. Compensation will be calculated in a currency convertible at the exchange rate prevailing at the date on which nationalization or expropriation was announced or made public and will include interest calculated on the basis of LIBOR Standards starting from the date of nationalization or expropriation up to the date of payment.

When the compensation has been determined, it will be paid without delay, and in any case within three months, and the authorization for its transfer abroad, if necessary, will be released immediately.

4. Where an expropriation is a foreign capital company constituted in the territory of one of the Contracting Parties, the remuneration to be paid to the investor of the other Contracting Party shall be calculated taking into account the amount of such investor in that company, as well as Indicated in the constitutive documents of the company itself.

5. A citizen or a company of one of the Contracting Parties claiming that all or part of his investment has been expropriated shall be entitled to the immediate examination by the judicial or administrative authorities of the other Party in order to determine whether the expropriation has taken place, and, if so, whether such expropriation and any related compensation would be in accordance with the principles of international law and in order to decide on all the other matters connected with it.

6. If, after the expropriation, the property in question has not been used, in whole or in part, for the purpose foreseen, the owner or the claimant is entitled to repurchase the property at the compensation price calculated in accordance with the provisions of Paragraph 3 of this Article, paragraph 3 of this Article.

Article 6. Capital Repatriation, Profits and Income

1. Each Contracting Party shall ensure that all payments relating to an investment in its territory of an investor of the other Party may be freely transferred to and from the territory of the other Party after all tax obligations have been fulfilled.

Such transfers include but are not limited to:

a) Capital and additional capital shares, including reinvested earnings, used to maintain and increase investment;

b) Net income, dividends, royalties, fees for assistance and technical services, interests and other profits;

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

d) Funds for the repayment of loans relating to an investment and the payment of interest thereon;

e) Remuneration and benefits received by citizens of the other Contracting Party for activities and services carried out in connection with an investment made in their territory, to the extent and in accordance with the procedures laid down by the applicable national laws and regulations.

2. The tax obligations referred to in the preceding paragraph shall be deemed to have been fulfilled when the investor has performed the procedures provided for by the law of the Contracting Party in whose territory the investment was made.

3. Without prejudice to the scope of Article 3 of this Agreement, the Contracting Parties undertake to grant the transfers referred to in paragraph 1 of this Article the same preferential treatment reserved to third-country investors, if they are more favorable.

Article 7. Subrogation

In the event that a Contracting Party or its institution has granted an insurance against non-commercial risks for investments made by investors in the territory of the other Contracting Party and has made payments under the guarantee granted, this Contracting Party shall recognize the first Contracting Party the right to surrogate investors' claims. For the transfer of payments to be made to the Contracting Party or its institution by virtue of such transfer, 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 made without undue delay, and in any case within one month. Such transfers shall be made in a currency convertible at the exchange rate prevailing on the date on which the investor requests the transfer, except for the provisions of Article 3 (3) concerning the exchange rate applicable in the event of nationalization or expropriation.

Article 9. Disputes between Investors and Contracting Parties

1. Controversies between a Contracting Party and investors of the other Contracting Party regarding investments, including those on the amount of compensation, shall, as far as possible, be made up of consultations and negotiations.

2. In the event that an investor and an entity of one of the parties have entered into an investment agreement, the procedures set out therein shall apply.

3. If such disputes can not be resolved amicably within six months of the date of the request for composition, sent in writing, the interested investor may, at his option, submit:

a) To the Court of the Contracting Party competent for the territory;

b) To an arbitral tribunal ad hoc, in accordance with the United Nations Commission on International Commercial Law (UNCITRAL) Arbitration Rules. The Contracting Party undertakes to accept the referral to that arbitration;

c) To the International Centre for Settlement of Investment Disputes, by the application of the arbitration procedures provided for in the Washington Convention of 18 March 1965 on the settlement of disputes concerning investments between States and citizens of other States when, or as soon as the Contracting Parties Contractors have joined that Convention.

4. The two Contracting Parties shall refrain from dealing diplomatically with matters relating to an arbitration procedure or ongoing proceedings until such proceedings have been concluded and one of the Contracting Parties has failed to comply with the judgment of the Arbitral Tribunal or the judgment of another Tribunal within The time limit prescribed by the award or judgment, or within the time limit determined in accordance with the provisions of international or domestic law applicable to the case.

Article 10. Composition of Contracts between the Contracting Parties

1. Disputes arising between the Contracting Parties on the interpretation and application of this Agreement shall, as far as possible, be amicably composed by diplomatic means.

2. In the event that such disputes can not be made within six months of the date on which one of the Contracting Parties has notified them in writing to the other Contracting Party, they shall, at the request of one of the Contracting Parties, be submitted to an Arbitral Tribunal "Ad hoc" in accordance with the provisions of this Article.

3. The Arbitral Tribunal shall be constituted as follows: within two months from the date of receipt of the request for arbitration, each Contracting Party shall appoint a member of the Tribunal. The Chairman shall be appointed by the two members appointed within three months of the date of their appointment.

4. If, within the time limit referred to in paragraph (3) of this Article, appointments have not yet been made, each of the two Contracting Parties may, in the absence of a different agreement, request their execution to the President of the International Court of Justice. If he is a national of one of the Contracting Parties, or for whatever reason he is not able to proceed with the nomination, he will be required to the Vice President of the Court. In the event that the Vice President of the Court is a citizen of one of the Contracting Parties, or for whatever reason can not make appointments, he will be invited to provide the senior member of the International Court of Justice who is not a national of one of the Contracting Parties.

5. The Arbitral Tribunal will decide by majority vote and its decisions will be binding. The two Contracting Parties shall bear the expenses of their arbitrator and those of their representatives at the hearings. The expenses of the President and the remaining expenses shall be borne by the two Contracting Parties equally.

The Arbitral Tribunal will establish its own procedures.

Article 11. Relations between Governments

The provisions of this Agreement shall apply irrespective of the existence or not of diplomatic or consular relations between the Contracting Parties.

Article 12. Application of other Provisions

1. Where a matter is governed by both this Agreement and any other International Agreement to which the two Contracting Parties have acceded, or rules of general international law, the Contracting Parties themselves and their investors shall apply the most favorable provisions.

2. Where 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 investment authorizations or arrangements, is more favorable than that provided for in this Agreement , The most favorable treatment will be applied.

3. If, after the date on which an investment was made, an amendment to the laws, regulations, policies or economic policy measures governing, directly or indirectly, investments will be applied to the investor, at the request of the investor Treatment applicable at the time the investment was made.

Article 13. Entry Into Force

This Agreement will enter into force on the date of the last notification by which the two Contracting Parties will be notified of the completion of their respective constitutional procedures.

Article 14. Duration and Expiration

1. This Agreement shall remain in force for ten (10) years from the date of notification referred to in Article 13 and shall remain in force for an additional period of five (5), unless one of the two Contracting Parties denies it in writing Not later than one year before its expiry.

2. For investments made before the expiry dates referred to in paragraph 1 of this Article, the provisions of Articles 1 to 12 shall remain in force for an additional period of five (5) years from the above mentioned dates.

IN WITNESS WHEREOF, the undersigned have signed this Agreement.

Done at Rome on 12 June 1997, in two originals in the Italian and French languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC

FOR THE GOVERNMENT OF THE REPUBLIC OF CABO VERDE

PROTOCOL

In signing the Agreement between the Government of the Italian Republic and the Government of the Republic of Cabo Verde in the matter of Promotion and Protection of Investments the Contracting Parties have in advance agreed on the following clauses to be considered as integral parts of the Agreement.

1. General Provisions

Given that an investment referred to in this Agreement is in accordance with the legislation of the Contracting Party in the territory of which it was carried out. this Agreement and all the terms contained therein apply also to the following activities

connected to it:

the organization, control, operation, maintenance and sale of companies, subsidiaries, agencies, offices, workshops or other funds that are useful for the conduct of business; the proceeds deriving from registrations, licenses, permits and other authorizations necessary for the performance of commercial activities; the conclusion. the formalization and execution of contracts: the acquisition, use and transfer of property of any kind. including the intellectual property, and its protection; access to the financial market, in particular the borrowing of funds. the purchase, issue and sale of shareholdings and other securities and the purchase of currency for imports necessary for the conduct of business: the marketing of goods and services; the granting of deductibles or license fees; the collection, sale and transport of raw materials and derived products, energy, fuels and means of production; the dissemination of commercial information.

2. With Reference to Article 2

a) In accordance with its laws and regulations, each Contracting Party shall guarantee to the citizens of the other Contracting Party located in its territory in connection with an investment under this Agreement, the working conditions appropriate to the performance of their professional activities.

b) In accordance with their own laws and regulations, each Contracting Party will regulate entry problems as positively as possible. is a day, work and movement on its territory of the citizens of the other Contracting Party, and of their family members, engaged in activities related to the investments envisaged by this Agreement.

c) Companies legally established in accordance with the laws or regulations of one of the Parties and which are owned by the other Party or controlled by the latter, they have the right to employ high-level management staff at their option, regardless of the nationality of the latter, in accordance with the legislation of the host Contracting Party.

3. With Reference to Article 3

All activities concerning the purchase, sale and transport of raw materials and derived products, energy, fuels, capital goods, as well as any other transaction linked to them or in any case connected to business initiatives envisaged by this Agreement, will enjoy, in the territory of each Contracting Party, a treatment no less favorable than that granted to similar activities and initiatives of resident citizens or investors of Third countries.

4. With Reference to Article 5

Any measure taken by one of the Contracting Parties relates to an investment made by an investor of the other Party who subtracts financial resources or the value of other assets making up the investment or creating obstacles activities or substantially affects the value of the investment itself, will be considered as one of the measures referred to in paragraph 2 of Article 5.

5. With Reference to Article 9

Regarding the arbitration referred to in Art. 9: 3 (b), it will be conducted in accordance with the arbitration criteria of the United Nations Commission on Commercial Law International (UNCITRAL) contained in the Resolution of the UN General Assembly of the United Nations 31/98 of 15 December 1976, in compliance with the following provisions:

a) The Arbitral Tribunal shall be composed of three arbitrators. If they are not nationals of the Contracting Parties, they shall be citizens of States having diplomatic relations with both Contracting Parties.

The President of the Arbitration Institute of the Stockholm Chamber of Commerce will proceed, in his capacity as Appointing Authority, to the designations of the arbitrators. The seat of the arbitration will be Stockholm, unless otherwise agreed between the parties involved;

b) The decision of the Arbitral Tribunal shall in any case take into account the provisions contained in this Agreement and the principles of international law recognized by the two Contracting Parties.

The recognition and enforcement of the arbitration decision in the territory of the Contracting Parties will be governed by their respective national laws in accordance with the relevant international Conventions.

IN WITNESS WHEREOF, the undersigned have signed the present Protocol.

Done at Rome on 12 June 1997, in two originals in the Italian and French languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC

FOR THE GOVERNMENT OF THE REPUBLIC OF CABO VERDE