

AGREEMENT BETWEEN THE REPUBLIC OF ITALY AND THE ARAB REPUBLIC OF EGYPT CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

The Republic of Italy and the Arab Republic of Egypt desiring to intensify economic co-operation between both countries, INTENDING to create favourable conditions for investments by nationals and companies of either country in the territory of the other country and

RECOGNIZING that encouragement and protection of such investments are apt to stimulate the flow of capital to the benefit of the economic prosperity of both countries

HAVE AGREED AS FOLLOWS

Article 1.

Each Contracting Party shall in its territory promote as far as possible the investment of capital by nationals or companies of the other Contracting Party and admit such investments in accordance with its legislation. It shall in any case accord such investments fair and equitable treatment.

Article 2.

(1) Neither Contracting Party shall in its territory subject investments completely owned by nationals or companies of the other Contracting Party to treatment less favourable than it accords to investments of its own nationals or companies or to investments of nationals or companies of any third country.

(2) Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their activity in connection with investments, to treatment less favourable than it accords to its own nationals or companies or to nationals or companies of any third country.

(3) The treatment so granted shall not apply to privileges which either Contracting Party accords to nationals or companies of a third country because of its membership in, or association with, a customs union, a common market or a free trade area.

Article 3.

(1) Investments by nationals or companies of either Contracting Party shall enjoy full protection in the territory of the other Contracting Party,

(2) Investments by nationals or companies of either Contracting Party shall not be expropriated in the territory of the other Contracting Party except for the public interest and against compensation. Such compensation would represent the equivalent at market prices of the investment expropriated; it shall be actually realizable, freely transferable, and shall be made without delay. Such compensation shall be fixed at the date of expropriation, nationalization or dispossession. Any dispute as to the conformity of such expropriation with the relevant legislation, or as to the amount of the compensation, would be subject, at the request of the interested Party, to review by due process of law in competent Courts of the country where the investment has taken place.

(3) Nationals or companies of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war, other armed conflict, or to other incidents considered as such by the international law, shall be accorded treatment no less favourable by such other Contracting Party than that Party accords to its own nationals or companies, as regards indemnification or compensation.

(4) Nationals or companies of either Contracting Party shall enjoy most-favoured-nation treatment in the territory of the

other Contracting Party in respect of the matters provided for in the present Article.

Article 4.

Either Contracting Party shall in respect of investments by nationals or companies of the other Contracting Party grant to those nationals or companies the free transfer of:

1. returns;
2. royalties deriving from incorporeal rights as defined in Article 8, paragraph 1, letters d) and e);
- 3 instalments in repayment of loans aiming at direct participation in the investment;
4. amounts spent for the management of the investment in the territory of the other Contracting Party;
5. additional funds necessary for the maintenance of the investment in either countries;
6. the value of partial or total liquidation of the investment, including a liquidation effected as a result of any event mentioned in paragraph 3 of Article 3.

Article 5.

In case one Contracting Party has granted any financial security against non-commercial risks in respect of an investment by a national or a company in the territory of the other Contracting Party, the latter shall recognize the subrogation by assignment of the granter to the rights of the investor as to damage, if payment has been made under that security to the extent of that payment and within the rights of the investor. As regards the transfer of payments to be made to the Contracting Party concerned by virtue of such assignment, Articles 3 and 4 shall apply respectively.

Article 6..

Transfers under Articles 3, 4 and 5 shall be made without delay Such transfer would be made in convertible currency according to the legislation in force in the territories of both Contracting Parties at the rate of exchange applied to the financial transactions on the date this transfer is made.

Article 7..

In case either Contracting Party has agreed upon more favourable terms with nationals or companies of the other Contracting Party, such terms shall supersede those specified in this Agreement

Article 8.

(1) The term "investment" comprises every kind of asset accepted in accordance with the respective prevailing legislation of either Contracting Party, and more particularly, though not exclusively.

- a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges, usufructs and similar rights;
- b) shares of companies and other kinds of interest;
- c) claims to money utilized with the purpose of creating an economic value or to any performance having an economic value;
- d) copyrights, industrial property rights, technical processes, know-how, trade marks and trade-names;
- e) business concessions under public law, including concessions to search for, extract or exploit natural resources.

Any admitted alteration of the form in which assets are invested shall not affect their classification as investment.

(2) The term "returns" means

The amounts yielded by an investment for a definite period as profit or interest.

(3) The term "nationales" means

Physical persons who, according to the respective legislation of each Contracting Party, are considered citizens of that Country.

(4) The term "company" means

Any legal entity established on the territory of either Contracting Party according to its national legislation and having its seat within its territory.

Article 9..

The present Agreement shall also apply to investments by nationals or companies of either Contracting Party, made prior to the entering into force of this Agreement and accepted in accordance with the respective prevailing legislation of either Contracting Party.

Article 10.

(1) Disputes concerning the interpretation or application of the present Agreement should, if possible, be settled by the Government of the two Contracting Parties.

(2) If a dispute cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such arbitral tribunal shall be constituted for each individual case as follows: Each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third country as their chairman to be appointed by the Governments of the two Contracting Parties. Such members shall be appointed within two months, and such chairman within three months, from the date on which either Contracting Party has informed the other Contracting Party that it wants to submit the dispute to an arbitral tribunal.

(4) If the periods specified in paragraph 3 above have not been observed, either Contracting Party may, in the absence of any other relevant 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 should make the necessary appointments. If the Vice-President 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 should make the necessary appointments.

(5) The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be final and binding. Each Contracting Party shall bear the cost of its own member and of its counsel in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The arbitral tribunal may make a different regulation concerning costs. In all other respects, the arbitral tribunal shall determine its own procedure.

(6) Local judicial remedies should be exhausted before any dispute can be submitted to an arbitral tribunal

Article 11.

The provisions of the present Agreement shall apply irrespective of the existence of diplomatic or consular relations.

Article 12.

(1) The present Agreement shall enter into force three months after the exchange of instruments of ratification. It shall remain in force for a period of five years and shall continue in force thereafter for another period of five years and so forth, unless denounced in writing by either Contracting Party one year before its expiration.

(2) In respect of investments made prior to the date of termination of the present Agreement, the provisions of Articles 1 to 12 shall continue to be effective for a further period of five years from the date of termination of the present Agreement.

DONE at Cairo, on 29th April 1975 in English language in two original copies

For the Republic of Italy

MARIANO RUMOR

For the Arab Republic of Egypt

ISMAIL FAHMY

PROTOCOL

On signing the Agreement concerning the Encouragement and Reciprocal Protection of Investments, concluded between the Arab Republic of Egypt and the Republic of Italy, the undersigned plenipotentiaries have, in addition, agreed on the following provisions which should be regarded as an integral part of the said Agreement.

1. Ad Articles 1 and 2

Investments to be made in accordance with the laws and regulations of a Contracting Party in its territory by nationals or companies of the other Contracting Party shall enjoy the full protection of the present Agreement. Either Contracting Party may subject investments to prior formal approval in accordance with its respective laws and regulations. If an admission procedure is required for making an investment, such investment shall enjoy the protection of the present Agreement as from the date of the issuing of the document of admission,

Applications for foreign investments in the Arab Republic of Egypt should be submitted to the General Authority for Arab and Foreign Investments and Free Zones.

2. Ad Article 2

a) The following shall more particularly, though not exclusively, be deemed " activity" within the meaning of paragraph 2 of Article 2: the management, maintenance, use, and enjoyment of an investment. The following measures shall in particular, be deemed "treatment less favourable" within the meaning of paragraph 2 of Article 2 if directed in a discriminatory way against nationals or companies of the other Contracting Party: restricting the purchase of raw or auxiliary materials, of power or fuel or of means of production or operation of any kind, impeding the marketing of products inside or outside the country, as well as any other measures having similar effects,

b) Paragraph 2 of Article 2 shall not apply to entry, sojourn and activity as an employee. :

Measures that have to be taken for reasons of public security and order, public health or morality shall not be deemed "treatment less favourable" within the meaning of Article 2.

3. Ad Article 3

The provisions of paragraph 2 of Article 3 shall also apply to any measure of expropriation, nationalization or dispossession, either direct or indirect, against investments made by nationals or companies of the other Contracting Party. Expropriation shall mean the taking away of any property right which in itself or in conjunction with other rights constitutes an investment.

4. Ad Article 4

"Liquidation" within the meaning of Article 4 shall be deemed to include any disposal effected for the purpose of completely or partly giving up the investment concerned.

5. Ad Article 5

In the event of voluntary liquidation or in case the investor, for reason beyond his control cannot continue to invest the funds transferred to the Arab Republic of Egypt, the capital invested, plus a certain percentage, would be completely transferred within delays stipulated by the laws and regulations in force in either countries.

6. Ad Article 6

The term "without delay" within the meaning of paragraph 1 of Article 6 is deemed to be fulfilled if a transfer is made within such period as is normally required for the completion of transfer formalities.

The term "rate of exchange" within the meaning of Article 6 is intended to be the rate of exchange applied to the financial

transactions expressed in freely convertible currency.

7. Ad Articles 2 and 8

a) Returns from an investment, as well as returns from reinvested returns, shall enjoy the same protection as the original investment.

b) Without prejudice to any other method of determining nationality, any person in possession of a valid national passport issued by the appropriate authorities of either Contracting Party shall be deemed to be a national of that Party.

8.

Whenever goods or persons connected with the making of investments are to be transported, either Contracting Party shall neither exclude nor hinder transportation enterprises of the other Contracting Party and shall issue permits as required to carry out such transports.

DONE at Cairo, on 28th April 1975 in English language in two original copies

For the Republic of Italy

Mariano Rumor

For the Arab Republic of Egypt

Ismail Fahmy

Exchange of Letters

Annex 1

Cairo, 29th April 1975

The Deputy Prime Minister and Minister of Foreign Affairs of the Arab Republic of Egypt

Excellency,

Intending to facilitate and promote the making and developing of investments by Italian nationals or companies in the Arab Republic of Egypt the Government of the Arab Republic of Egypt will grant the necessary permits to Italian nationals who in connection with investments by Italian nationals or companies desire to enter and stay in the Arab Republic of Egypt and to carry on an activity there as employees, except as reasons of public order and security, of public health or morality may warrant otherwise.

Accept, Excellency, the assurances of my highest consideration.

Ismail FAHMY

His Excellency Mariano Rumor

Minister of Foreign Affairs of the Republic of Italy

Cairo, 29th April 1975

The Minister of Foreign Affairs of the Republic of Italy

Excellency,

I have the honour to confirm the receipt of your letter of to-day which reads as follows

"Intending to facilitate and promote the making and developing of investments by Italian nationals or companies in the Arab Republic of Egypt the Government of the Arab Republic of Egypt will grant the necessary permits to Italian nationals who in connection with investments by Italian nationals or companies desire to enter and stay in the Arab Republic of Egypt and to carry on an activity there as employees, except as reasons of public order and security, of public health or morality may warrant otherwise."

Accept, Excellency, the assurances of my highest consideration

Mariano RUMOR

His Excellency Ismail Fahmy Deputy Prime Minister and Minister of Foreign Affairs of the Arab Republic of Egypt

Annex 2

Cairo, 29th April 1975

The Deputy Prime Minister and Minister of Foreign Affairs of the Arab Republic of Egypt

Excellency,

I would like to confirm that we have agreed upon the following:

Transfers made according to Articles 3, 4 or 5 of the Agreement will be effected without delay in the currency agreed upon in accordance with paragraph 6 of the Protocol.

If either of the periods stipulated in paragraph 6 of the Protocol is exceeded, the Contracting Party concerned will apply a rate of exchange not less favourable than the rate valid on the last day of the respective periods stipulated in paragraph 6 of the Protocol.

Accept, Excellency, the assurances of my highest consideration

Isman Fahmy

His Excellency Mariano Rumor

Minister of Foreign Affairs of the Republic of Italy

Cairo, 29th April 1975

The Minister of Foreign Affairs of the Republic of Italy

Excellency,

I have the honour to confirm the receipt of your letter of today which reads as follows

I would like to confirm that we have agreed upon the following:

"Transfers made according to Article 3, 4 or 5 of the Agreement will be effected without delay in the currency agreed upon in accordance with paragraph 6 of the Protocol.

If either of the periods stipulated in paragraph 6 of the Protocol is exceeded, the Contracting Party concerned will apply a rate of exchange not less favourable than the rate valid on the last day of the respective periods stipulated in paragraph 6 of the Protocol",

Accept, Excellency, the assurances of my highest consideration

Mariano RuMOR

His Excellency Ismail Fahmy Deputy Prime Minister and Minister of Foreign Affairs of the Arab Republic of Egypt

Annex 3

Cairo, 29th April 1975

The Deputy Prime Minister and Minister of Foreign Affairs of the Arab Republic of Egypt

Excellency,

I have the honour to inform you that the Government of the Arab Republic of Egypt in order to promote the making of investments by nationals or companies of the Republic of Italy in the territory of the Arab Republic of Egypt prior to the entry into force of the Agreement, will provisionally apply the Agreement. as from the day of signature and is ready to issue as from that date the documents of admission as referred to in paragraph 1 of the Protocol to the present Agreement.

This declaration of intent is exclusively given with the aim that the Government of the Republic of Italy may consider the issuing of guarantees for investments to be made by Italian nationals or companies in the Arab Republic of Egypt prior to

the entry into force of the Agreement.

Accept, Excellency, the assurances of my highest consideration

Ismail FAHMY

His Excellency

Mariano Rumor

Minister of Foreign Affairs of the Republic of Italy

Cairo, 29th April 1975

The Minister of Foreign Affairs of the Republic of Italy

Excellency,

I have the honour to confirm the receipt of your letter of to-day which reads as follows

"I have the honour to inform you that the Government of the Arab Republic of Egypt in order to promote the making of investments by nationals or companies of the Republic of Italy in the territory of the Arab Republic of Egypt prior to the entry into force of the Agreement, will provisionally apply the Agreement as from the day of signature and is ready to issue as from that date the documents of admission as referred to in paragraph 1 of the Protocol to the present Agreement.

This declaration of intent is exclusively given with the aim that the Government of the Republic of Italy may consider the issuing of guarantees for investments to be made by Italian nationals or companies in the Arab Republic of Egypt prior to the entry into force of the Agreement".

Accept, Excellency, the assurances of my highest consideration

Mariano RUMOR

His Excellency Ismail Fahmy

Deputy Prime Minister and Minister of Foreign Affairs of the Arab Republic of Egypt