A G R E E M E N T

BETWEEN THE REPUBLIC OF ITALY

AND

THE STATE OF KUWAIT

FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Italy and the Government of the State of Kuwait (hereinafter collectively referred to as the Contracting States and each referred to as Contracting Party or Contracting State).

Desiring to create favourable conditions for greater economic co-operation between them, and in particular for investments by investors of one Contracting State in the territory and maritime zones of the other Contracting State.

Recognizing that the encouragement and reciprocal protection under international agreements of such investments will be conducive to the stimulation of business initiative and will increase prosperity in both Contracting States.

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement

(1) The term "investment" shall comprise every kind of asset invested before or after the entry into force of this Agreement by a natural or juridical person including the Government of a Contracting State, in the territory and maritime zones of the other Contracting State, in accordance with the laws and the regulations of that State. Without restricting the generality of the foregoing, the term "investment" shall include:

(a) movable and immovable property as well as any other property rights in rem such as mortgages, liens, pledges, usufruct and similar rights;

(b) shares, stocks and debentures of companies, or other rights or interests in such companies, and government issued securities;

(c) claims to money, or to any performance having economic value associated with an investment;

(d) copyrights, trademarks, patents, industrial designs, and other industrial property rights, know-how, trade secrets, trade names, and goodwill;

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(e) any right conferred by law or contract, and any licences and permits pursuant to law, including the right to search for, extract, and exploit natural resources.

(2) The term "investor" shall mean any natural or juridical person, including the Government of a Contracting State who invests in the territory and maritime zones of the other Contracting State.

(3) The term "natural person" shall mean, with respect to either Contracting State, a natural person holding the nationality of that State in accordance with its laws.

(4) The term "juridical person" shall mean, with respect to either Contracting State, any entity established in accordance with, and recognized as a juridical person by the law of the State: such as public institutions, corporations, authorities, foundations, private companies, firms, establishments and organisations, irrespective of whether their liabilities are limited or otherwise.

(5) The term "returns" shall mean amounts yielded by an investment and in particular, though not exclusively, includes profits, interests, capital gains, share dividends, royalties or fees.

(6) " Maritime zones" mean the marine and submarine zones

over which the Contracting States exercise, under international law, sovereignty, sovereign rights and/or jurisdiction.

ARTICLE 2

Promotion and Protection of Investments

) Each Contracting State shall encourage investors of the other Contracting State to make investments in its territory and maritime zones and, in exercise of powers conferred by its laws, shall admit such investments.

(2) Each Contracting State shall at all times ensure fair and equitable treatment to the investments of investors of the other Contracting State. Each Contracting State shall ensure that the management, maintenance, use, enjoyment or disposal of investments in its territory and maritime zones of investors of the other Contracting State shall not in any way be subjected to, or impaired by, unreasonable or discriminatory measures.

(3) If necessary, the Contracting States shall periodically consult between themselves concerning investment opportunities within the territories and maritime zones of each other in various sectors of the economy, to determine where investments from one Contracting State into the other may be most beneficial, in the interest of both Contracting States.

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ARTICLE 3

Most Favoured Nation Provisions

(1) Each Contracting State shall in its territory and maritime zones accord investments and returns of investors of the other Contracting State treatment not less favourable an that which it accords to investments and returns of its own investors, or to investments and returns of investors of any Third State, whichever is the most favourable.

(2) Each Contracting State shall in its territory and maritim zones accord investors of the other Contracting State,as regards management, maintenance, use, enjoyment or disposal of their investments, treatment not less favourable than that which it accords to its own investors, or to investors of any Third State, whichever is the most favourable.

(3) The treatment mentioned above shall not apply to any advantage accorded to investors of a Third State by either Contracting State based on the membership of that Contracting State in a Customs Union, Common Market, Free Trade zone, regional or sub-regional arrangement, economic multilateral international Agreement, or based on an Agreement concluded between that Contracting State and a third State on avoidance of double taxation, or for facilitation of frontier trade.

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ARTICLE 4

Compensation for Damage or Loss

(1) When investments by investors of either Contracting State suffer loss owing to war, other armed conflict, a state of national emergency, or other similar events in the territory and maritime zones of the other Contracting State, they shall receive just and adequate compensation for the loss substained. Resultant payments shall be freely transferable without undue delay.

(2) Investors of either Contracting State shall enjoy, in respect to the matters provided for in this Article of this Agreement, the same treatment accorded to nationals of such Contracting State and, in any case, not less favourable than that accorded to investors of any Third State.

ARTICLE 5

Nationalization or Expropriation

(1) (i) Investments of either Contracting State, or any of its natural or juridical persons, shall not be subject to any measures limiting the right of ownership, possession, control, or enjoyment of these investments, whether permanent or temporary, except for the specific provisions of the laws in force and the order issued by a competent court.

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(ii) Investments of either Contracting State or any of its natural or juridical persons shall not be directly or indirectly nationalized, expropriated, or subjected to measures having effect equivalent to nationalization or expropriation, in the territory and maritime zones of the either Contracting State, except for a public purpose in the national interest of that State, for prompt, adequate and just compensation, and on condition that such measures are taken on a non-discriminatory basis and in accordance with due process of law.

(iii) Such compensation shall be computed on the basis of the fair market value of the investment immediately prior to the point of the time when the decision for nationalization or expropriation was announced or became publicly known and shall be determined in accordance with the recognized principles of valuation, such as market value. Where the market value cannot be readily ascertained, the compensation shall be determined on equitable principles taking into account, inter alia, the capital invested, depreciation, capital already repatriated, replacement value, goodwill and other relevant factors. The compensation shall include interest at the current six month LIBOR rate of interest, from the date of nationalization or expropriation until the date

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of payment. The determination of the compensation, in the absence of agreement being reached between the investors and the host State, shall be referred to the settlement procedures in accordance with Article 8 of this Agreement. The compensation finally determined shall be promptly paid and allowed to be repatriated.

(iv) Where a Contracting State nationalizes or expropriates the investment of a juridical person which is established or licenced, under the law in force, in its territory and maritime zones, and in which the other Contracting State or any of its natural or juridical persons owns shares, stocks, debentures or other rights or interests, it shall ensure that prompt, adequate, and just compensation is received and allowed to be repatriated. Such compensation shall be determined on the basis of the recognized principles of valuation, such as the market value of the shares immediately prior to the point of time when the decision for nationalization or expropriation was announced or became publicly known. The compensation shall include interest at the current six month LIBOR rate of interest from the date of nationalization or expropriation until the date of payment.

(2) The provisions of paragraph (1) of this Article shall

also apply to the current income from an investment as well as, in the event of liquidation, to the proceeds from the liquidation.

ARTICLE 6

Repatriation of Capital and Returns

(1) Each Contracting State shall guarantee, without undue delay and after the performance of all fiscal obligations the transfer in any convertible currency of:

(a) the net profits, dividends, royalties, technical assistance and technical service fees, interest and other current income, accruing from any investment by an investor of the other Contracting State;

(b) the proceeds accruing from the total or partial sale or total or partial liquidation of any investment made by an investor of the Contracting State;

(c) funds in repayment of borrowings;

(d) the earnings of nationals of the other Contracting State deriving from their work and service in connection with an investment in its territory and maritime zones, in accordance with its national laws and regulations.

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(2) Without restricting the generality of Article (3) of this Agreement, the Contracting States undertake to accord to transfers referred to in paragraph (1) of this Article a treatment as favourable as that accorded to transfers originating from investments made by investors of any Third State.

3) For the purpose of this Agreement, exchange rates shall be determined in accordance with the official rates agreed with the International Monetary Fund or, where such rates do not exist, with the official exchange rates for Special Drawing Rights or the United States Dollar, or any other convertible currency agreed upon by the Contracting States.

(4) Such transfers as above shall, however, be subject to such reasonable regulatory procedures as shall, from time to time, be in force in the host State and shall likewise be subject to the right of its government to impose reasonable restrictions for temporary periods to meet situations of fundamental economic disequilibrium.

ARTICLE 7

Subrogation

In case one Contracting State has granted any guarantee against non-commercial risks in respect of an investment by its investor in the territory and maritime zones of the other Contracting State, and has made payment

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to such investor under said guarantee, the other Contracting State shall recognize the transfer of the right of such investor to the first mentioned Contracting State, and the subrogation of that State shall not exceed the original rights of such investor. As regards the transfer of payments to be made to the Contracting State by virtue of such subrogation Articles (4),(5) and (6), shall apply respectively.

ARTICLE 8

Settlement of Investment Disputes

(1) All kinds of disputes or differences, including disputes over the amount of compensation for expropriation, nationalization or similar measures, between one Contracting State and an investor of the other Contracting State concerning an investment of that investor in the territory and maritime zones of the former Contracting State shall, if possible, be settled amicably.

(2) If such disputes or differences cannot be settled according to the provisions of paragraph (1) of this Article within six months from the date of request for settlement, the investor concerned may :

(a) submit the dispute to the competent court of the Contracting State for decision;

or

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(b) initiate proceedings for conciliation or arbitration, in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18th March, 1965, or the Additional Facility Rules thereof. In the event of neither of these procedures being applicable, the arbitration shall take place in accordance with the United Nations Commission on International Trade Law Arbitration Rules of 1976 (UNCITRAL).

3) Neither Contracting State shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have terminated and a Contracting State has failed to abide by, or to comply with, the award rendered by the Arbitral Tribunal.

ARTICLE 9

Settlement of Disputes between Contracting States

(1) Disputes between the Contracting States concerning the interpretation and application of this Agreement shall be settled, as far as possible, through friendly consultation by both States through diplomatic channels.

(2) If such disputes cannot be so settled within three months from the date on which either Contracting State

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informs in writing the other State, they shall, upon the request of either Contracting State, be submitted to an ad hoc Arbitral Tribunal, in accordance with the provisions of this Article.

(3) The Arbitral Tribunal shall be constituted in the following way. Within two months from the receipt of the request for arbitration, each Contracting State shall appoint one member of the Tribunal. The two members shall then select a national of a third State who shall act as Chairman (hereinafter referred to as the Chairman).
The Chairman shall be appointed within three months from the date of appointment of the other two members.

(4) If, within the periods specified in paragraph (3) of this Article, either Party shall not have appointed its arbitrator or the two arbitrators shall not have agreed on the Chairman, a request may be made to the President of the International Court of Justice to make the appointment. If he happens to be a national of either Contrating State, or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointment. If the Vice-President also happens to be a national of either Contracting State, or 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 State, shall be invited to make the appointment.

(5) The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting State shall bear the cost of its own arbitrator and its counsel in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting States. The Arbitral Tribunal shall determine its own procedure.

ARTICLE 10

Relations between Contracting States

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

ARTICLE 11

Application of Other Rules

(1) Where a matter is governed both by this Agreement and by another international agreement to which both Contracting States are Parties, or general international law, nothing in this Agreement shall prevent either Contracting State, or any of its natural or juridical persons who owns investments in the territory and maritime zones of the other Contracting State, from taking advantage of whichever rules are more favourable to his case.

(2) If the treatment to be accorded by one Contracting State to investors of the other Contracting State, in accordance with its laws and regulations or other specific provisions or contracts, is more favourable than that accorded by this Agreement, the more favourable treatment shall be accorded.

ARTICLE 12

Entry into Force

This Agreement shall enter into force on the latter date on which either Contracting State notifies the other that its constitutional requirements for the entry into force of this Agreement have been fulfilled.

ARTICLE 13

Duration and Termination

(1) This Agreement shall remain in force for a period of twenty years, and shall continue in force thereafter for another similar period, or periods, unless denounced in writing by either Contracting State one year before its expiration.

(2) In respect to 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 fifteen years from the date of termination of the present Agreement.

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

Done in duplicate at Rome on the 17th of December 1987 , corresponding to the 26 Rabie Al Akhar 4- 1408 H in the Italian, Arabic and English languages, all texts being equally authentic.

In case of any divergency, the English text shall prevail.

For the Government of the State of Kuwait

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For the Government of the Republic of Italy

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P R O T O C O L

On signing the Agreement between the Government of the Republic of Italy and the Government of the State of Kuwait concerning the Promotion and Protection of Investments, the undersigned Plenipotentiaries have, in addition, agreed on the following provisions, which should be regarded as an integral part of the said Agreement.

For individual cases beyond the aim of the present Agreement, both Parties agree on the possibility of bilateral consultations, when predominant interests by investors of one of the Contracting States suggest the opportunity of applying the principles or the provisions of the present Agreement.

1. With respect to Article (3) :

(a) All activities involving the purchase, sale, and transport of raw and secondary materials, energy, fuels, and means of production, and operations of all types shall be accorded treatment not less favourable than that accorded to the investment-related activities carried out by the nationals of the host State, or

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third-State investors, whichever is the most favourable. There shall be no impediment to the normal exercise of such activities, provided they are carried out in accordance with the laws and regulations of the host State, and in observance of the provisions of this Agreement.

(b) Nationals authorized to work in the territory and maritime zones of one of the Contracting States shall be accorded the appropriate support for the exercise of their professional activities.

(c) The Contracting States shall facilitate in the light of their domestic laws the issuance of entry visas and authorizations pertaining to the stay, work, and travel of the nationals of one Contracting State pursuant to an investment in the territory and maritime zones of the other Contracting State.

2. With respect to Artiche (5) :

The provisions of this Article shall apply to any measure of expropriation, nationalization, or other similar measures, such as freezing of assets concerning investments made by investors of the other Contracting State.

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3. With respect to Articles (4), (5) and (6) :

(a) The term "without undue delay", within the meaning of Articles (4),(5) and (6), is deemed to be fulfilled if a repatriation is made within such period as is normally required according to international financial custom and not later, in any case, than three months.

(b) Invested returns shall enjoy the same facilities and protection as the original investment.

(c) The Contracting States agree that the eventual procedures mentioned in paragraph (4) of Article (6) shall be implemented in good faith and that the restriction period shall, however, be strictly limited to the time necessary to meet situations of fundamental economic disequilibrium.

4. With respect to Article (8):

Regarding the arbitration under paragraph (2) of Article (8) which is to be conducted in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL), the Arbitral Tribunal shall be established as follows:

a) The Arbitral Tribunal shall consist of three arbitrators. Each party shall select an arbitrator.

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These two arbitrators shall appoint by mutual agreement a Chairman, who shall be a national of a third State which has diplomatic relations with both Contracting States. The arbitrators shall be appointed within two months from the date when one of the parties to the dispute informed the other of its intention to submit the dispute to arbitration.
If the appointments are not made within the period mentioned above, either party may invite the Chairman of the Arbitration Institute of the Stockholm Chamber of Commerce to make the required appointment within two months.

b) The Arbitral Tribunal shall reach its decision by a majority of votes. Its award shall be final and binding on both parties to the dispute, and shall be enforced by both parties to the dispute in accordance with their domestic laws.

c) The Arbitral Award shall be made in accordance with the domestic laws, including the rules of conflict of the Contracting State which accepts investments, and in accordance with the provisions of this Agreement, as well as with the principles of international law generally recognized and adopted by both Contracting States.

d) Each party to the dispute shall bear the cost of its own arbitrator and of its counsel in the arbitration

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proceedings. The cost of the Chairman and the remaining costs of the Arbitral Tribunal shall be borne in equal parts by both parties to the dispute.

Done in duplicate at Rome on the 17th of December 1987, corresponding to 26 Rabie Al Akhar 4 - 1408 H, in the Italian, Arabic and English languages, all texts being equally authentic.

In case of divergency, the English text shall prevail.

For the Government of the State of Kuwait

For the Government of the Republic of Italy