Agreement Between the Government of the People's Republic of China and the Government of the Republic of South Africa concerning the Reciprocal Promotion and

Protection of Investments

The Government of the People's Republic of China and the Government of the Republic of South Africa (hereinafter referred to as the Contracting Parties),

INTENDING to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

RECOGNISING that the reciprocal encouragement, promotion, and protection of such investments will be conducive to stimulating business initiative of the investors and will increase prosperity in both States,

DESIRING to intensify the economic cooperation of both States on the basis of equality and mutual benefits;

Have agreed as follows:

Article 1.

For the purpose of this Agreement,

1. The term "investment" means every kind of asset invested by investors of one Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the Latter, and in particularly, though not exclusively, includes:

(a) movable and immovable property as well as any property rights, such as mortgages, liens and pledges;

(b) shares, debentures, stock and any other kind of participation in companies;

(c) claims to money or to any other performance having an economic value;

(d) intellectual property rights, in particular copyrights, patents, utility-model patents, registered designs, trade-marks, trade-names, trade and business secrets, technical processes, know-how and good-will;

(e) concessions conferred by law, including concessions to search for, or exploit resources.

2. The term "investor" means:

In respect to either Contracting Party:

(i) the nationals of a Contacting Party, being those natural persons deriving their status as nationals of a Contracting Party from the law of that Contracting Party;

(ii) the companies of a Contacting Party, being any economic entity, or legal person, corporation, firm or association incorporated or constituted in accordance with the laws and regulations of that Contracting Party;

3. The term "return" means all amounts yielded by investments, such as profits, dividends, capital gains, interest, royalties or other legitimate income;

4. The term territory means the territory of a Contracting Party, including the land area, inland area, territorial sea under the sovereignty of that Contracting Party and any maritime area situated beyond the territorial sea of that Contracting Party exercise sovereign rights and/or jurisdictional rights in accordance with domestic and international law.

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

Article 2.

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its laws and regulations.

2. Each Contracting Party shall grant assistance in and provide facilities for obtaining visas and working permits to nationals of the other Contracting Party to or in the territory of the Former in connection with activities associated with such investments.

3. Each Contracting Party shall grant, subject to its laws and regulations, the necessary permits in connection with such investments and with carting out of licensing agreements and contracts for technical, commercial or administrative assistance.

Article 3.

1. Investments and activities associated with investments of investoirs of either Contracting Party shall be accorded fair and equitable treatment and shall enjoy protection in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

2. The treatment and protection referred to in Paragraph 1 of this Article shall not be less favourable than that accorded to investments and activities associated with such investments of investors of a third State. Without prejudice to its laws and regulations, each Contracting Party shall accord to investments

And activities associated with such investments by the investors of the other Contracting Party treatment not less favorable than that accorded to the investments and associated activities by its own investors.

3. The Republic of South Africa shall in its territory accord to investments and returns of investors of the other Contracting Party treatment not less favourable than that which it accords to investments and returns of its own investors with the eception of any domestic legislation relating wholly or mainly to taxation or programmes and economic activities specifically aimed to promote, protect and advance persons and groups of persons that have been disadvantaged as a result of past discriminatory practices in the Republic of South Africa.

4. the provisions of paragraph (1) and (2) shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) any customs union, free trade area, common market, any similar international agreement or any interim arrangement leading up to such customs union, free trade area, or common market to which either of the Contracting Parties is or may become a party.

(b) any international agreement or arrangement relating wholly or mainly to taxations, or;

(c) any special arrangement to facilitate frontier trade.

If a Contracting Party accords special advantages to development finance institutions with foreign participation and established for the exclusive purpose of development assistance through mainly nonprofit activities, that Contracting Party shall not be obliged to accord such advantages to development finance institutions or toher investors of the other Contracting Party. \

Article 4.

1. Investments of investors of either Contracting Party shall not be nationalized expropriated, or subjected to measures having effects equivalent to nationalization or expropriation (hereinafter referred to as expropriation") in the territory of the other C0ontracting Party except for public purposes, under domestic legal procedure, on a non-discriminatory basis and against compensation. Such compensation shall be at least equal to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a normal commercial rate until the date of payment, shall be made without delay, and be effectively realizable.

2. The investor affected by the expropriation shall have a right, under the laws and regulations of the Contracting Party

making the expropriation, to promote review, by a court of law or other independent and impartial forum of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles referred to in Paragraph (1).

Article 5.

1. Investors of one Contracting Party who suffers losses in respect of their investments in the territory of the other Contracting Party owing to war, a state of national emergency, insurrection, riot or other similar events, shall be accorded by the latter Contracting Party, it takes relevant measures, treatment no less favourable that accorded to the investors of a third State.

2. Without derogating from the provisions of paragraph(1) of this Article, investors of one Contracting Party who in any of the institutions referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

(a) Requisitioning of their property by the forces or authorities of the latter Contracting Party, or

(b) Destruction of their property by the forces or authorities of the latter Contracting Party, which was not caused action or was not required by the necessity of the situation,

Shall be accorded restitution or adequate compensation..

Article 6.

1. Each Contracting Party shall, subject to its laws and regulations, guarantee to the investors of the other Contracting Party the transfer of their investments and returns held in its territory, including:

(a) profits, dividends, interests and other legitimate income;

(b) amounts obtained from the total or partial or liquidation of investments;

(c) payments made pursuant to a loan agreement in connection with investment;

(d) royalties in Paragraph 1 (d) of Article 1.;

(e) payments of technical assistance or technical service fees, management fee;

(f) payments in connection with projects on contract;

(g) earnings of nationals of the other Contracting Party who work in connection with an investment in the territory of the one Contracting Party.

(h) compensation paid pursuant to Article 4 and 5 of this Agreement.

2. All transfers shall be effected without delay in any convertible currency at the market rate of exchange applicable on the date of transfer.

Article 7.

If one Contracting Party or its Agency makes a payment to an investor under guarantee it has granted to an investment of such investor in the territory of the other Contracting Party, such other Contracting Party shall recognize the assignment of any the right or claim of such investor to the former Contracting Party or its Agency and recognise the subrogation of the former Contracting Party or its Agency to such right or claim. The subrogated right or claim shall not be greater than the original right or claim of the said investor.

Article 8.

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled with consultation through diplomatic channels.

2. If a dispute cannot thus be settled within six months from the time of submission of the formal claim, it shall, upon the request of either Contracting Party, be submitted to an ad hoc arbitral tribunal.

3. Such tribunal comprises of three arbitrators. Within two months from the date on which either Contracting Party receives

the written notice requesting for arbitration from the other Contracting Party, each Contracting Party shall appoint one arbitrator who is a national of a third State which has diplomatic relations with both Contracting Parties as Chairman of the arbitral tribunal. The third arbitrator shall be appointed by the two Contracting Parties as Chairman of the arbitral tribunal.

4. If the arbitral tribunal has not been constituted within four months from the receipt of the written notice requesting arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator(s) who has or have not yet been appointed. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function the next most senior 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 appointment(s).

5. The arbitral tribunal shall determine its own procedure. The arbitral tribunal shall reach its award in accordance with the provisions of this Agreement and the principles of international law recognized by both Contracting Parties.

6. The arbitral tribunal shall reach its award by a majority of votes. Such award shall be final and binding on both Contracting Parties. The ad hoc arbitral tribunal shall, upon the request of either Contracting Party, explain the reasons of its award or amplify its award.

7. Each Contracting Party shall bear the costs of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the Chairman and the tribunal shall be borne in equal parts by the Contracting Parties.

Article 9.

1. Any dispute between an investor of the other contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

2. If the dispute cannot the settled through negotiations within six months, the either Party to the dispute shall be entitled to submit the dispute to an international arbitral tribunal provided that the Contracting Party involved in the dispute may require the investor to initiate administrative review procedures in accordance with its laws and regulations, and provided that the investor has not submitted the dispute to a dometic court of that Contracting Party.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way: each Party to the dispute shall appoint one arbitrator, and these two shall select a national of a third State which has diplomatic relations with the two Contracting Parties as the Chairman. The first two arbitrators shall be appointed within two months of the written notice for arbitration by either party to the dispute to the other, and the Chairman shall be selected within four months. If within the period specified above, the tribunal has not been constituted, either Party to the dispute may invite the Secretary General of the International Center for Settlement of Investment Disputes to make the necessary appointments.

4. The tribunal shall determine its own procedure. However, the tribunal may, in the course of determination of procedure, take as guidance the Arbitration Rules of International Center for Settlement of Investment Disputes.

5. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding upon both parties to the dispute. Both Contracting Parties shall commit themselves to the enforcement of the award in accordance with their respective domestic law.

6. The tribunal shall adjudicate in accordance with the law of the Contracting Party to the dispute accepting the investment including its rules on the conflict of laws, the provisions of this Agreement as well as the generally recognized principles of international law accepting by both Contracting Parties.

7. Each Party to the dispute shall bear the costs of its appointed member of the arbitral and of its representation in the proceedings. The cost of the appointed Chairman and the remaining costs shall be borne in equal parts by the parties to the dispute. The tribunal may in its decision direct that a higher proportion of the costs shall be borne by one of the two parties.

Article 10.

1. If the treatment to be accorded by one Contracting Party in accordance with its laws and regulations to investments or activities associated with such investments of investors of the other Contracting Party is more favourable than the treatment provided for in this Agreement, the more favourable treatment shall be applicable.

2. Each Contracting Party shall observe any other obligation it may have entered into with regard to investments of investors of the other Contracting Party.

Article 11.

This Agreement shall apply to investments which are made prior to or after its entry into force by investors of either Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the Latter, nut shall not apply to any dispute which arose before entry into force of this Agreement.

Article 12.

1. This Agreement shall enter into force on the first day of the month following after the date on which both Contracting Parties have notified each other in writing that their respective internal legal procedures for entry into force of this Agreement have been fulfilled, and shall remain in force for a period of ten years.

2. This Agreement shall continue in force if either Contracting Party fails to give a written notice to the other Contracting Party to terminate this Agreement one year before the expiration of the period specified in Paragraph 1 of this Article.

3. After the expiration of initial ten years period, either Contracting Party may at any time thereafter terminate this Agreement by giving at least one year's written notice to the other Contracting Party.

4. With respect to investments made prior to the date of termination of this Agreement, the provisions of Article 1 to 11 shall continue to be effective for a further period of ten years from such date of termination.

5. This Agreement may be amended by negotiated agreement between the Contracting Parties, and any such amendment shall be effected by exchange of Notes between them.

IN WITNESS WHEREOF, the duly authorized representatives of their respective Governments have signed this Agreement.

Done in duplicate at Pretoria on December 30,1997 in two originals in the Chinese and English languages, all texts being equally authentic.

SUN GUANGXIANG NZO, Alfred

For the Government of the People's Republic of China

For the Government of the Republic of South Africa