AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE ITALIAN REPUBLIC ON THE PROMOTION AND PROTECTION OF INVESTMENTS

PREAMBLE

The Government of the Republic of South Africa and the Government of the Italian Republic (hereafter referred to as "the Contracting Parties"),

Desiring to establish favourable conditions for improved economic cooperation between the two Countries, and especially in relation to capital investment by investors of one Contracting Party in the territory of the other Contracting Party;

and

Acknowledging that the offering of encouragement and mutual protection of such investment, based on International Agreements, will contribute to stimulate business ventures, which foster the prosperity of both Contracting Parties,

Hereby agree as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means any kind of asset invested, before or after the entry into force of this Agreement, by an investor of a Contracting Party in the territory of the other Contracting Party, in conformity with the laws and regulations of that Party, irrespective of the legal form chosen, as well as of the legal framework.

Without limiting the generality of the foregoing, the term "investment" comprises in particular, but not exclusively:

a) movable and immovable property and other rights in rem, including real guarantee rights on the property of others, to the extent that it can be invested;

b) shares, equity holdings, debentures, as well as Government and public securities in general or any other instruments of credit;

c) credit for sums of money or any service right under contract having an economic value connected with an investment;

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

e) any economic rights conferred by law or by contract and any Licence and franchise granted in accordance with the laws and regulations in force in respect of economic activities, including the right to prospect for, extract and exploit natural resources;

f) any increases in value of the original investment.

Any modification in the form in which assets are invested or re-invested does not imply a change in their nature as investments.

2. Reference to "Investment" also applies to the following associated activities:

The organization, control, operation, maintenance and disposal of companies, branches, agencies, offices or any other organisations for the conduct of business; the receipt of registrations, licenses, permits and other approvals necessary for the conduct of commercial activity; the acquisition, use and disposal of property of ali kinds, including intellectual property, as well as the protection thereof; the access to the financial markets, in particular the borrowing of funds, the Purchase, and

salie and issue of shares and other securities; and the purchase of foreign exchange for imports necessary for the conduct of business affairs; the marketing of goods and services; the procurement, Sale and transport of raw and processed materials, energy, fuels and production means; the dissemination of commercial information.

3. The term "investor" means any natural or legal person of a Contracting Party investing in the territory of the other Contracting Party, as well as foreign subsidiaries, affiliates and branches controlled in any way by the said hatural and legal persons.

4. The term "natural person", in reference to either Contracting Party, means any natural person holding the hationality of that State in accordance with its laws.

5. The term "legal person", in reference to either Contracting Party, means any entity incorporated or established in accordance with, and recognized as a legal person, by its laws and having its head office in the territory of that Contracting Party, such as public institutions, corporations, partnerships, foundations and associations, regardless of whether their liability is limited or otherwise,

6. The term "returns" means the amounts of money accruing to an investment, including in particular profits or interest, interest income, capital gains, dividends, royalties or payments for assistance, technical services and others as well as any payments in kind such as, but not exclusively, raw materials, produce, products or live-stock.

7. The term "territory" means, in addition to the zones contained within the land boundaries, the maritime zones, including the marine and submarine zones, over which the Contracting Parties concerned exercise sovereignty, and sovereign or jurisdictional rights, under international law.

8. "Investment Agreement" means an agreement between a Contracting Party, its Agencies or Representatives, and an investor of the other Party concerning an investment.

9. "Non-discriminatory treatment" means treatment that is at least as favourable as the better of national treatment or most~-favoured-nation treatment.

10. "Right of access" means the right to be admitted to carry out investment in the territory of the other Contracting Party in accordance with the laws and reguiations of that Contracting Party.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall, within the framework of its laws and regulations, encourage investors of the other Contracting Party to invest in its territory.

2. Investors of one of the Contracting Parties shall have the right of access to the investment activities, in the territory of the other Contracting Party, not less favourable than the one granted as per Article 3.1.

3. Each Contracting Party shall at all times ensure just and fair treatment of the investments of investors of the other Contracting Party. Each Contracting Party shall ensure that the Management, Maintenance, use, transformation, enjoyment or assignment of the investments effected in their territory by investors of the other Contracting Party, as well as companies and enterprises in which these investments have been effected, shall in no way be subject to unjustified or discriminatory measures.

4. Each Contracting Party shall create and maintain in its territory legal conditions favourable to investors in accordance with its own legislation.

5. Each Contracting Party shall use its best endeavours to facilitate, in accordance with its laws, the entry, stay, work and movement in its territory of nationals of the other Contracting Party, and members of their families, performing activities related to investments under this Agreement.

Article 3. Rational Treatment and the Most Favoured Nation Clause

1. Each Contracting Party, within the bounds of its own territory, shall offer investments and returns of investors of the other Contracting Party no less favourable treatment than that accorded to investments of its own investors or investors of Third States.

2. If provisions in the legislation of a Contracting Party, or in international agreements in force or which may come into force in the future for that Contracting Party, Should accord to investors of the other Contracting Party more favourable treatment than foreseen in this Agreement, such provisions shall, to the extent that they are more favourable to the

investor concerned, prevail over this Agreement. This principle shall also apply to existing investments.

3. The provisions to paragraphs (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 existing or future customs union, economic 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, or

b) any international agreement or arrangement relating wholly or mainly to taxation or to facilitate cross border trade or any domestic legislation relating wholly or mainly to taxation.

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 other investors of the other Contracting Party.

Article 4. Compensation for Damage or Losses

1. An investor of a Contracting Party whose investments suffer losses owing to war or other armed conflict, revolution, a state of emergency, revolt, insurrection or riot in the territory of the other Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that accorded to its own investors or to investors of any Third State.

2. Without prejudice to paragraph (1) of this Article, an investor of a Contracting Party whose investment, in any of the situations referred to in that paragraph, suffers josses in the territory of the other Contracting Party resulting from requisitioning or destruction by the forces or authorities of the latter Contracting Party, and the loss was not caused in combact action or required by the necessity of the situation, as defined in International Law, shall be accorded adequate and effective compensation or restitution,

Article 5. Nationalization or Expropriation

1. The investments to which this Agreement relates shall not be subject to any measure which might limit the right of ownership, possession, control or enjoyment of the investments, permanently or temporarily, save where Specifically provided by current national or local legislation or regulations and orders handed down by Courts or Tribunals having jurisdiction.

2. investments of investors of a Contracting Party shall not be de jure or de facto, directly or indirectly, Nationalized, expropriated, requisitioned or subjected to any measures having an equivalent effect in the territory of the other Contracting Party, except for public purposes or in national interest and in exchange for immediate, full and effective compensation, and on condition that these measures are taken on a non-discriminatory basis and in conformity with all legal provisions and procedures.

3. The just compensation shall be established in the national currency on the basis of the real international market values immediately prior to the moment on which the decision to nationalize or to expropriate is announced or made public.

4. The exchange rate applicable to any such compensation shall be that prevailing on the date immediately prior to the moment in which the nationalization or expropriation has been announced or made public.

5. Without restricting the scope of the above paragraph, in case that the object of nationalization, expropriation, or similar action by a Contracting Party, is a company with mixed capital, the evaluation of the share of the investor of the other Contracting Party will be in the currency of the investment, not lower than the starting value of the investment increased by capital increases and revaluation of capital, undistributed profits and reserve funds and diminished by the value of capital reductions and losses.

6. Compensation will be considered as actual if it has been paid in the same currency in which the investment has been made by the investor, in as much as such currency is - or remains - convertible, or, otherwise, in any other currency accepted by the investor.

7. Compensation will be considered as timely if it takes place without undue delay and, in any case, within one month from the date of the establishment of the value thereof.

8. Compensation shall include interest calculated on a six Months LIBOR basis from the date of nationalization or

expropriation to the date of payment.

9. A national or company of either Contracting Party that asserts that all or part of its investment has been expropriated shall have a right to prompt review by the appropriate judicial or administrative authorities of the other Contracting Party to determine whether any such expropriation conforms to national law principles and international law.

10. The provisions of paragraph (2) of this Article shall also apply to profits accruing to an investment and, in the event of winding-up, the proceeds of liquidation.

11. If, after the dispossession, the good concerned has not been utilized, wholly or partially, for that purpose, the Owner or his assignees are entitled to the repurchasing Of the good at the market price.

Article 6. Subrogation

If a Contracting Party or its designated Agency, makes a payment to its own investor under a guarantee it has given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise the subrogation of the former Contracting Party in all the rights and claims of the indemnified investor, and shall recognise that the former Contracting Party or its designated Agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the original investor. In relation to the transfer of payments to the Contracting Party or its Agency by virtue of this subrogation, the provisions of Articles 4, 5, and 7 of this Agreement shall apply.

Article 7. Repatriation of Capital, Profits and Income

1. Each of the Contracting Parties shall guarantee that the investors of the other, subject to its laws and regulations, may transfer the following abroad, without undue delay, in any convertible currency:

a) capital and additional capital, including reinvested income, used to maintain and increase investment;

b) the net income, dividends, royalties, payments for assistance and technical services, interest and other profits;

c) income deriving from the total or partial sale or the total or partial liquidation of an investment;

d) funds to repay loans connected to an investment and the payment of the related interest;

e) net remuneration and allowances paid to nationals of the other Contracting Party for work and services performed in relation to an investment effected in the territory of the other Contracting Party:

f) compensation and payment made pursuant to Articles 4, 5 and 6.

2. The transfers referred to in the present Article and in Articles 4, 5 and 6 shall be effected without undue delay and, in all events, within six months after all fiscal obligations have been met, and shall be made in a convertible currency, All the transfers shall be made at the prevailing exchange rate applicable on the date on which the investor applies for the related transfer, with the exception of the provisions under point 4 of Article 5 concerning the exchange rate applicable in case of nationalization or expropriation.

3. The fiscal obligations under the previous paragraph are deemed tc be complied with when the investor has fulfilled the proceedings provided for by the law of the Contracting Party on the territory of which the investment has been carried out.

Article 8. Settlement of Disputes between Investors and Contracting Parties

1. Any disputes which may arise between one of the Contracting Parties and the investors of the other Contracting Party on investments, including disputes relating to the amount of compensation, shall be settled amicably, as far as possible.

2. In case the investor and one of the Contracting Parties, its Agencies or Representatives, have stipulated an investment agreement, the procedure foreseen in such investment agreement shall apply.

3. In the event that such dispute cannot be settled amicably within six months of the date of the written application for settlement, the investor in question may submit at his choice the dispute for settlement to:

a) the Contracting Party's Court having territorial jurisdiction; or,

b) an ad hoc Arbitration Tribunal, in compliance with the arbitration rules of the UN Commission on International Trade Law (UNCITRAL) and the host Contracting Party undertakes hereby to accept the reference to said arbitration; or,

c) the International Centre for Settlement of Investment Disputes (ICSID), for the implementation of the arbitration procedures under the Washington Convention of 18 March 1965, on the settlement of investment disputes between States and Nationals of other States, if or as soon as both the Contracting Parties have acceded to it. As long as this requirement is not met, each Contracting Party agrees that the dispute may be submitted to arbitration pursuant to the rules of the Additional Facility of ICSID, of 1978.

4. Both Contracting Parties shall refrain from negotiating through diplomatic channels any matter relating to an arbitration or judicial procedures underway until these procedures have been concluded, and one of the Contracting Parties has failed to comply with the ruling of the Arbitration Tribunal or the Court of law within the period envisaged by the ruling, or else within the period which can be determined on the basis of the international or domestic law provisions which can be applied to the case.

Article 9. Settlement of Disputes between the Contracting Parties

1. Any disputes which may arise between the Contracting Parties relating to the interpretation and application of this Agreement shall, as far as possible, be settled amicably through diplomatic channels.

2. In the event that the dispute cannot be settled within six months from the date on which either of the Contracting Parties requested, in writing, the other Contracting Party, the dispute shall, at the request of one of the Contracting Parties, be laid before an ad hoc Arbitration Tribunal as provided in this Article.

3. The Arbitration Tribunal shall be constituted in the following manner: within two months from the moment on which the request for arbitration is received, each of the two Contracting Parties shall appoint a member of the Tribunal. The two members shall then choose a national of a Third State to serve as a President. The President shall be appointed within three months from the date on which the cther two members are appointed.

4. If, within the period specified in paragraph (3) of this Article, the appointments have not been made, each of the two Contracting Parties can, in default of other arrangement, request the President of the International Court of Justice to make the appointment. In the event that the President of the Court is a national of one of the Contracting Parties or it is, for any reason, impossible for him to make the appointment, the application shall be made to the Vice-President of the Court. If the Vice-President of the Court is a national of one of the Contracting Parties, or is unable to make the appointment for any reason, the most senior member of the International Court of Justice, who is not a national Of one of the Contracting Parties, shall be invited to make the appointment.

5. The Arbitration Tribunal shall rule with a majority vote, and its decision shall be binding. Both Contracting Parties shall pay the costs of their own arbitration and of their representative at the hearings. The President's costsâ and any other costs shall be divided equally between the Contracting Parties.

Article 10. Relations between Governments

The provisions of this Agreement shall be applied irrespective of whether or not the Contracting Parties have diplomatic or consular relations.

Article 11. Application of other Provisions

1. If a matter is governed both by this Agreement and another International Agreement to which both Contracting Parties are signatories, or by general international law provisions, the most favourable provisions shall be applied to the Contracting Parties and to their investors.

2. Whenever the treatment accorded by one Contracting Party to the investors of the other Contracting Party according to its laws and regulations or other provisions or specific contract or investment authorisations or agreement, is more favourable than that provided under this agreement, the more favourable treatment shall apply.

Article 12. Entry Into Force

The Contracting Parties shall notify each other when their respective constitutional requirements for entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the date of receipt of the last notification.

Article 13. Duration and Expiry

1. This Agreement shall remain effective for a period of ten (10) years from the date of the notification under Article 12 and shall remain in force for a further period of ten (10) years thereafter, save if one of the two Contracting Parties withdraws in writing by not later than one year before its expiry date.

2. In the case of investments effected prior to the expiry dates, as provided under paragraph (1) of this Article, the provisions of Articles 1 to tt shall remain effective for a further ten (10) years after the aforementioned dates.

In WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed the present Agreement.

DONE at Rome this 9 day of June, one thousand nine hundred and ninety-seven, in two originals, each in English and in Italian, both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC