DECLARATION OF SPECIAL ARRANGEMENTS FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

IN EXERCISE of the powers conferred by section 8B of the Foreign Investment Protection Act (Cap. 518), the Deputy Prime Minister and Minister for Finance declares that the arrangements specified in the Schedule hereto, between the Government of the Republic of Kenya and the Government of the Islamic Republic of Iran for the Reciprocal Promotion and Protection in relation to foreign investments, entered into on the 24th February, 2009, shall, notwithstanding anything to the contrary in the Foreign Investment Protection Act (Cap. 518) or in any other written law, have effect in relation to investments promotion and protection.

SCHEDULE

The Government of the Islamic Republic of Iran and the Government of the Republic of Kenya hereinafter referred to as the Contracting Parties,
Desiring to intensify economic reciprocal co-operation to the mutual benefit of both states intending to utilize their economic resources and potential facilities in the areas of investments as well as to create and maintain favourable conditions for investments of the nationals of the Contracting Parties in each other territory and;
recognizing the need to promote and protect investments of the nationals of the Contracting Parties in each other's territory.

HAVE AGREED AS FOLLOWS:

Article I. Definitions

For the purpose of this Agreement:

1. The term "investments" mean every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting party including in particular, though not exclusively:

(a) Movable and immovable property as well as rights related thereto such as mortgages, liens, pledges, leases, usufruct and similar rights;

(b) Reinvested returns;

(c) Shares in and stocks and debentures of a company or any other forms of participation in a company;

(d) Claims to money or rights to a performance having an economic value; intellectual property rights such as patents, copyrights, trademarks, industrial designs, business names, geographical indications as well as technical processes, know-how and goodwill; and

(e) Concessions conferred by law, by an administrative act or under a contract by a competent authority, including concessions to search for, develop, extract or exploit natural resources.

(f) Any change in the form in which assets are invested or reinvested does not affect their character as investments.

2. The term "returns" means the amounts yielded by investments and shall in particular though not exclusively, include profits, dividends, capital gains, royalties, fees or any payments in kind related to an investment.

3. The term "investor" means, for either Contracting Party, the following subjects who invest in the territory of other Contracting Party in accordance with the laws of the latter Contracting Party and the provisions of this Agreement:

(a) Any natural person who is a national of either Contracting Party in accordance with its laws; or

(b) Any legal entity such as company, corporation, firm, partnership, business association, institution or organisation,

incorporated or constituted in accordance with the laws and regulations of the Contracting Party and having its registered office or central administration or principal place of business within the jurisdiction of that Contracting Party.

4. The term "territory" refers to the areas under the sovereignty or jurisdiction of either Contracting Party as the case may be and includes their maritime areas.

Article 2. Promotion of Investments

1. Either Contracting Party shall encourage its nationals to invest in the territory of the other Contracting Party.

2. Either Contracting Party shall within the framework of its laws and regulations, create favourable conditions for attraction of investments of nationals of the other Contracting Party in its territory.

3. Each Contracting Party shall endeavour to encourage the use of both local human and natural resources for the promotion of investments in its territory.

Article 3. Admission of Investments

1. Either Contracting Party shall admit investments of natural and legal persons of the other Contracting Party in its territory in accordance with its laws and regulations.

2. When an investment is admitted, either Contracting Party shall in accordance with its laws and regulations, grant all necessary permits for the realization of such investment.

Article 4. Protection of Investments

Investments of natural or legal persons of either Contracting Party effected within the territory of the other Contracting Party, shall receive the host Contracting Party's full legal protection and fair treatment not less favourable than that accorded to its investors or to investors of any third state who are in a comparable situation.

Article 5. More Favourable Provisions

Notwithstanding the terms set forth in this Agreement, more favourable provisions which have been or may be agreed upon by either of the Contracting Parties with an investor of the other Contracting Party are applicable.

Article 6. Exemptions

The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors and investments by investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of any existing or future:

(a) free trade area, customs union, common market, economic and monetary union or other similar regional economic integration agreement, including regional labour market agreements, to which one of the Contracting Parties is or may become a party, or

(b) agreement for the avoidance of double taxation or other international agreement relating wholly or mainly to taxation.

Article 7. Expropriation and Compensation

1. Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalization or any other measures having the same nature or the same effect against investments of investors of the other Contracting Party, unless the measures are taken in the public interest, on a non-discriminatory basis and under due process of law, and upon payment of prompt and full compensation.

2. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriatory action was taken or became public knowledge, whichever is earlier. The amount of compensation including financial costs from the date of dispossession until the date of payment, shall be settled in a freely convertible currency and be paid without a delay and be freely transferable.

3. The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review by a judicial or other independent authority of that Contracting Party, of his case and of the valuation of his

investment in accordance with this paragraph.

4. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraphs 1 to 3 of this Article are applied in respect of their investment to such investors of the contracting party who are owners of those shares.

Article 8. Compensation for Losses

Investors of one Contracting Party whose investment in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other settlement, a treatment no less favourable than that accorded by the latter Contracting Party to its own investors or investors of the most favoured nation, whichever, according to the investor, is more favourable.

Article 9. Repatriation and Transfer

1. Each Contracting Party shall, in accordance with its laws and regulations, permit in good faith the following transfers related to investments referred to in this Agreement, to be made freely and without delay out of its territory:

(a) Returns;

(b) Proceeds from the sale and/or liquidation of all or part of the investment; royalties and fees related to transfer of technology agreement;

(c) Sums paid pursuant to articles 7 and 8 of this Agreement;

(d) Loan installments related to an investment provided that they are paid out of such investment activities;

(e) Monthly salaries and wages received by the employees of an investor who have obtained in the territory of the host Contracting Party, the corresponding work permits related to that investment;

(f) Payments arising from a decision of the authority referred to in Article 13; compensation payable pursuant to Articles 7, 8, 10 and 13.

2. The above transfers shall be effected in a convertible currency and at the current rate of exchange in accordance with the exchange regulations prevailing on the date of transfer.

3. The investor and the host Contracting Party may agree otherwise on mechanism of repatriation or transfer referred in this Article.

4. The application of this Article does not affect the obligation of an investor to comply with the tax laws and regulations of each Contracting Party.

Article 10. Subrogation

If a Contracting Party or its designated agency within the framework of a legal system subrogates an investor pursuant to a payment made under an insurance or guarantee agreement against non-commercial risks-

Article 11. Observance of Commitments

Either Contracting Party shall guarantee the observance of the commitments it has entered into with respect to investments of natural or legal persons of the other Contracting Party.

Article 12. Scope of the Agreement

1. This Agreement shall apply to investments, in the territory of one Contracting Party by investors of the other Contracting Party, approved in accordance with its laws and regulations, whether prior to or after the entry into force of the Agreement. It shall however not apply to claims or disputes arising out of events which occurred prior to its entry into force.

2. In the case of the Islamic Republic of Iran only investments approved by the competent authorities of the Contracting Party are covered by this Agreement. The competent authority in the Islamic Republic of Iran its Organization for

Investment, Economic and Technical Assistance of Iran (O.I.E.T.A.I) or the agency that might succeed it.

Article 13. Settlement of Disputes between an Investor and a Contracting Party

1. Any dispute arising directly from an investment between one Contracting Party and an investor of the other Contracting Party shall be settled amicably between the two parties to the dispute.

2. If the dispute has not been settled within six (6) months from the date on which it was raised in writing, the dispute may, at the choice of the investor, be submitted to:

(a) The competent courts of the Contracting Party in whose territory the investment is made; or

(b) Arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March, 1965, if or as soon as both contracting parties have acceded; or

(c) An ad hoc arbitration tribunal to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(d) Any other previously accepted ad hoc arbitration tribunal.

3. An investor who has submitted the dispute to a national court may nevertheless have recourse to one of the arbitral proceedings mentioned in paragraphs 2(b) to 2(d) of this Article if, before a judgement has been delivered on the subject matter by a national court, the investor declares not to pursue the case any longer through national proceedings and withdraws the case.

4. Any arbitration under this Article shall, at the request of either party to the dispute, be held in a state that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), opened for signature at New York on 10 June 1958. Where claims are submitted for arbitration under this Paragraph, the execution of the award shall be in accordance with the provisions of the New York Convention.

5. Each Contracting Party hereby gives its unconditional consent to the submission of a dispute between it and an investor of the other Contracting Party to arbitration in accordance with this Article.

6. Subject to other provisions agreed by the Contracting Parties, the arbitral tribunal shall determine its procedure and place of arbitration.

7. The decisions of the arbitral tribunal shall be binding on the contracting parties.

Article 14. Settlement of Disputes between Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall, as far as possible, be settled through diplomatic channels.

2. If the dispute cannot thus be settled within six (6) months following the date on which either Contracting Party requested such negotiations, it shall at the request of either Contracting Party be submitted to an Arbitral Tribunal.

3. Such an Arbitral Tribunal shall be constituted for each individual case in the following way. Within two (2) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. Those two members shall then select a national of a third State who, on approval by the two Contracting Parties, shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within three (3) months from the date of appointment of the other two members. However, the Chairman of the Arbitral Tribunal shall be a national of a state having diplomatic relations with both Contracting Parties.

4. If the necessary appointments have not been made within the periods specified in paragraph 3 of this Article, either Contracting Party may, in the absence of any other 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 is otherwise 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 or is not otherwise prevented from discharging the said function, shall be invited to make the necessary appointments.

5. The Arbitral Tribunal shall reach its decision by a majority of votes. The decisions of the Tribunal shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the member appointed by that Contracting Party

and of its representation in the arbitral proceedings. Both Contracting Parties shall assume an equal share of the costs of the Chairman, as well as any other costs. The Tribunal may make a different decision regarding the sharing of the costs. In all other respects, the Arbitral Tribunal shall determine its own rules of procedure.

6. Issues subject to dispute referred to in paragraph 1 of this Article shall be decided in accordance with the provisions of this Agreement as well as the recognised rules and principles of international law.

Article 15. Validity of the Agreement

1. This agreement shall be ratified by each Contracting Party in accordance with its laws and regulations and shall enter into force for a period of ten years after 30 days from the date of the last notification of either Contracting Party to the other Contracting Party.

2. The Agreement shall remain in force thereafter unless one of the Contracting Parties notifies the other Contracting Party in writing of its unwillingness to continue with it, one year prior to the expiration or termination thereof.

3. After the expiration of the validity or termination of this Agreement, its provisions shall apply to investments under this Agreement for a further period of ten years.

Article 16. Language and Number of the Texts

This Agreement is done in duplicate in the Persian and English languages, all texts being equally authentic.

Dated the 22nd September, 2009

UHURU KENYATTA

Deputy Prime Minister and Minister for Finance