Agreement on Reciprocal Promotion and Protection of Investments between the Government of the Islamic Republic of Iran and the Government of the Republic of South Africa

The Government of the Islamic Republic of Iran and the Government of the Republic of South Africa hereinafter jointly referred to as the "Contracting Parties" and each in the singular as a "Contracting Party"

Desiring to intensify the economic cooperation to the mutual benefit of both States;

Intending to utilize their economic resources and potential facilities in the area of investments as well as to create and maintain favorable conditions for investments of the investors of the Contracting Parties in each others' territory and;

Recognizing the need to promote and protect investments of the investors of the Contracting Parties in each others' territory;

Have Agreed as follows:

Article 1. Definitions

For the purpose of this Agreement, the meanings of the terms used herein are as follows:

1. The term "investment" refers to every kind of property or asset invested by the investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the other Contracting Party (hereinafter referred to as the host Contracting Party), including the following:

a) Movable and immovable properties as well as rights related thereto;

b) Shares or any kind of participation in companies;

c) Money and receivables;

d) Industrial and intellectual property rights such as patents, utility models, industrial designs or models, trade marks and names, know-how and goodwill;

e) Rights to search for, extract or exploit natural resources;

Any change in the form in which assets are invested, subject to the approval of the competent authorities of the country in whose territory the investments is made, does not affect their character as investments.

2. The term "investors" refers to the following persons who invest in the territory of the other Contracting Party within the framework of this Agreement:

a) Natural persons who, according to the laws of either Contracting Party, are considered to be its nationals and do not have the nationality of the host Contracting Party.

b) Legal persons of either Contracting Party which are established under the laws of that Contracting Party and their headquarters or their real economic activities are located in the territory of that Contracting Party.

3. The term "proceeds" refers to the amounts legally yielded by an investment including profit derived from investments, dividends, royalties and fees.

4. The term "territory" refers to 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 investors to invest in the territory of the other Contracting Party.

2. Either Contracting party shall, within the framework of its laws and regulations, create favorable conditions for attraction of investments of investors of the other Contracting Party 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 an investment.

Article 4. Protection of Investments

1. Investments and proceeds of investors 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 favorable than that accorded to its own investors or to investors of any third state who are in a comparable situation.

2. If a Contracting Party has accorded or shall accord in future special advantages or rights to its own investors or to investors of any third state by virtue of an existing or future agreement establishing a free trade area, a customs union, a common market or a similar regional institution or by virtue of any domestic legislation relating wholly or mainly to taxation, or by virtue of an agreement on the avoidance of double taxation, it shall not be obliged to accord such advantages or rights to investors of the other Contracting Party.

Article 5. More Favorable Provisions

Notwithstanding the terms set forth in this Agreement, more favorable 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. Expropriation and Compensation

1. Investments of investors of either Contracting Party shall not be nationalized, confiscated, expropriated or subjected to similar measures by the other Contracting Party unless if such measures are taken for public purposes, in accordance with due process of law, in a non-discriminatory manner and upon payment of prompt, effective and appropriate compensation.

2. The amount of compensation shall be equivalent to the value of the investment immediately before the action of nationalization, confiscation or expropriation was taken.

Article 7. Losses

1. Investors of either Contracting Party whose investments suffer losses due to any armed conflict, revolution or similar state of emergency in the territory of the other Contracting Party shall not be accorded by the other Contracting Party treatment to less favorable than that accorded to its own investors or to investors of any third country.

2. Without derogating from the provisions of paragraph (1) of this Article, investors of one Contracting Party who in any of the situations 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 in combat action or was not requied by the necessity of the situation, shall be accorded restitution or adequate compensation.

Article 8. Capital Return 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) Proceeds;

b) Sums derived from the sale or liquidation of all or part of an investment;

c) Royalties and fees related to agreements on technology transfer;

d) Sums paid pursuant to Articles 6 and / or 7 of this Agreement;

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

f) 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;

g) Payments arising from a decision of the authority referred to in Article 12.

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 the mechanism of return or transfers referred to in this Article.

Article 9. 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:

a) Such subrogation shall be recognized by the other Contracting Party,

b) The subrogee shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise;

c) Disputes between the subrogee and the host Contracting Party shall be settled in accordance with Article 12 of this Agreement.

Article 10. Observance of Commitments

Either Contracting Party shall guarantee the observance of the Commitments it has entered into through this Agreement with respect to investment of natural or legal persons of the other Contracting Party.

Article 11. Scope of the Agreement

This Agreement shall apply to investments approved by the competent authorities of the host Contracting Party.

The competent authority in the Islamic Republic of Iran is the Organization for Investment and Economic and Technical Assistance of Iran.

This Agreement shall also, subject to the approval of the competent authority of the Contracting party in whose territory the investment is made, be applicable to the investments made before the date of entry into force of this Agreement, but shall not apply to any dispute which arose before entry into force of this Agreement.

Article 12. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. If any dispute arises between the host Contracting Party and an investor of the other Contracting Party with respect to an investment, the host Contracting Party and the investor shall primarily endeavor to settle the dispute in an amicable manner through negotiation and consultation.

2. In the event that the host Contracting Party and the investor can not agree within six months from the date of notification of the claim by one party to the other, either of them may refer the dispute, with due regard to their own laws and regulations, to an arbitral tribunal of three members referred to in paragraph (4) below.

3. National courts shall not have jurisdiction over any dispute referred to arbitration. However, the provisions of this paragraph do not bar the winning party to seek the enforcement of the arbitral award before national courts.

4. The host Contracting Party or the Investor of the other Contracting Party who desires to refer the dispute to arbitration

shall appoint an arbitrator through a written notice sent to the other party. The other party shall appoint an arbitrator within sixty days from the date of receipt of the said notice and the appointed arbitrators shall within sixty days from the date of the last appointment, appoint the umpire. In the event that either party fails to appoint its arbitrator within the prescribed period or the appointed arbitrators fail to agree on the umpire, each of the parties may request the secretary General of the International Arbitral Tribunal of the International Chamber of Commerce (ICC) to appoint the failing party's arbitrator or the umpire, as the case may be. However, the umpire shall be appointed from amongst nationals of a state having diplomatic relations with both Contracting Parties at the time of appointment.

5. The arbitration award shall be final and binding on the parties to the dispute. Each Contracting Party shall give effect to the award rendered in accordance with its laws and regulations.

Article 13. Settlement of Disputes between the Contracting Parties

1. All disputes arising between the Contracting Parties relating to the interpretation or application of this Agreement shall, in the first place, be settled amicably by consultation. In case of disagreement, either Contracting Party subject to its laws and regulations, while sending a notice to the other party, may refer the case to an arbitral tribunal of three members consisting of two arbitrators appointed by the Contracting Parties.

In case the dispute is referred to the arbitral tribunal, either Contracting Party shall appoint an arbitrator within sixty days from the receipt of the notification and the arbitrators appointed by the Contracting Parties shall appoint the umpire within sixty days from the date of last appointment, if either Contracting Party does not appoint its own arbitrator or the appointed arbitrators do not agree on the appointment of the umpire within the said periods, either Contracting Party may request the President of the International Court of Justice to appoint the arbitrator of the failing party or the umpire, as the case may be.

However, the umpire shall be a national of a state having diplomatic relations with both Contracting Parties at the time of the appointment.

2. In case the umpire is to be appointed by the President of the International Court of Justice, if the President of the International court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the vice-president of the International Court of Justice, and if the vice-president is also prevented from carrying out the said function or he is a national of either contracting party, the appointment shall be made by the most senior member of the said Court who is not a national of either Contracting Party.

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

4. The decisions of the arbitral tribunal shall be binding on the Contracting Parties.

5. The arbitral tribunal shall decide on the dispute according to this Agreement and the principles of the International Law.

6. The arbitral tribunal shall reach its decision by a majority of votes.

7. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the umpire and the remaining cost shall be borne equally by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties.

Article 14. Validity of the Agreement

1. The Contracting parties shall fulfill their respective constitutional requirements for entry into force of this Agreement.

2. This Agreement 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 that it has fulfilled necessary measures in accordance with its laws and regulations for the entry into force of this Agreement. After the said period, this 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, six months prior to the expiration or termination thereof.

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

4. The terms of this Agreement may be amended through negotiation between the Contracting Parties. The Contracting Parties shall fulfill their respective constitutional requirements for entry into force of any such amendments. Such amendments shall come into force by exchange of Notes between them.

Article 15. Language and Number of the Texts

This Agreement is done in Persian and English languages, both texts being equally authentic.

Signed in Pretoria on 12th Aban 1376 corresponding to 3 November 1997 by representatives of the Governments of the Islamic Republic of Iran and the Republic of South Africa.

For the Government of the Islamic Republic of Iran: Signed.

For the Government of the Republic of South Africa: Signed.

Protocol

On signing the Agreement on Reciprocal Promotion and Protection of Investments between the Government of the Islamic Republic of Iran and the Government of the Republic of South Africa, the Contracting Parties also agreed on the following provisions, which shall be deemed to be and integral part of the Agreement:

The provisions of Article 4 shall not be construed so as to oblige the Republic of South Africa to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

1) Any undertakings it may have assumed with regard to foreign Economic development institutions.

2) Any law or other measure taken, pursuant to Article (9) of the Constitution of the Republic of South Africa, 1996 (Act 108, 1996) the purpose of which is to promote the achievement of equality in its territory, or designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination.

This Protocol is done in Persian and English languages, both texts being equally authentic.

Signed in Pretoria on 3 November 1997 corresponding to 12th Aban 1379 by representatives of the Government of the Islamic Republic of Iran and the Government of the Republic of South Africa.