AGREEMENT

BETWEEN

THE GOVERNMENT OF

THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF

THE REPUBLIC YEMEN

FOR THE RECIPROCAL PROMOTION

AND PROTECTION OF INVESTMENTS

PREAMBLE

The Government of the Republic of South Africa and the Government of the Republic of Yemen (hereinafter jointly referred to as the "Parties" and separately as a "Party");

DESIRING to create favourable conditions for greater investment by investors of either Party in the territory of the other Party; and

RECOGNISING that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in the territories of both Parties;

HEREBY AGREE as follows:

ARTICLE 1

Definitions

(1) In this Agreement, unless the context indicates otherwise -

(a). "Investment" means every kind of asset and in particular, though not exclusively, includes -

(i) movable and immovable property as well as other rights *in rem* such as mortgages, liens or pledges;

(ii) shares in and stock and debentures of a company and any other form of participation in a company;

(iii) claims to money or to any performance under contract having an economic value related to investments;

(iv) intellectual property rights, in particular copyrights, patents, utility-model patents, registered designs, trademarks, trade names, trade and business secrets, technical processes, know-how, and goodwill.

(b) "Investor" means in respect to either Party -

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

(ii) the "companies" of a Party, being any legal person, corporation, firm or association incorporated or constituted in accordance with the domestic law of that Party;

c) "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees;

(d) "territory" means the territory of a Party, including the territorial sea and any maritime area situated beyond the territorial sea of that Party, which has been or might in the future be designated under the domestic

law of the Party concerned, in accordance with international law, as an area within which the Party may exercise sovereign rights and jurisdiction.

(2) Any change in the form in which assets are invested shall not affect its character as investments.

ARTICLE 2

Promotion of Investments

(1) Each Party shall, subject to its general policy in the field of foreign investment, encourage investments in its territory by investors of the other Party, and, subject to its right to exercise powers conferred by its domestic law, shall admit such investments.

(2) Each Party shall grant, in accordance with its domestic law, the necessary permits in connection with such investments and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance.

(3) In order to create favourable conditions for assessing the financial position and results of activities related to investments in the territory of a Party, that Party shall, notwithstanding its own requirements for book-keeping and auditing, permit the investment to be subject also to bookkeeping and auditing according to standards which the investor is subjected to by her, his or its national requirements or according to internationally accepted standards (such as International Accountancy Standards (IAS) drawn up by the International Accountancy Standards Committee (IASA)). The results of such accountancy and audit shall be freely transferable to the investor.

ARTICLE 3

Treatment of Investments

(1) Investments and returns of investors of either Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection in the territory of the other Party. Neither 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 Party.

(2) Each Party shall in its territory accord to investments and returns of investors of the other Party treatment not less favourable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State.

(3) Each Party shall in its territory accord to investors of the other Party treatment not less favourable than that which it accords to its own investors or to investors of any third State.

(4) The provisions of sub-article (2) and (3) shall not be construed so as to oblige a Party to extend to the investors of the other Party the benefit of any treatment, preference or privilege resulting from -

(a) any existing or future 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 Party is or may become a party.

(b) any international agreement or arrangement relating wholly or mainly to taxation or its domestic law relating wholly or mainly to taxation.

(c) its domestic law or other measure with 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 in its territory.

(5) If a Party accords special advantages to development finance institutions with foreign participation and established for the exclusive purpose of development assistance through mainly non-profit activities, that Party shall not be obliged to accord such advantages to development finance institutions or other investors of the other Party.

ARTICLE 4

Compensation for Losses

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

ARTICLE 5

Expropriation

(1) Investments of investors of either Party shall not be nationalised, expropriated or subjected to measures having effects equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Party except for public purposes, under due process of law, on a non-discriminatory basis and against prompt, adequate and effective 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. Compensation shall be in accordance with the international commercial legislation and shall be made without delay, and be effectively realizable.

(2) The investor affected by the expropriation shall have a right, under the domestic law of the Party making the expropriation, to prompt review, by a court of law of other independent and impartial forum of that Party, of his or her or its case and of the valuation of his/her or its investment in accordance with the principles referred to in subarticle (1).

ARTICLE 6

Transfers of Investments and Returns

(1) Each Party shall allow investors of the other Party the free transfer of payments relating to their investments and returns, including compensation paid pursuant to Articles 4 and 5.

(2) All transfers shall be effected without delay in any convertible currency at the market rate of exchange applicable on the date of transfer. In the absence of a market for foreign exchange, the rate to be used will be the most recent exchange rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is the more favourable to the investor.

(3) Transfers shall be done in accordance with the domestic law of the Party pertaining thereto. Such law shall not, regarding either the requirements or the application thereof, impair or derogate from the free and undelayed transfer allowed in terms of subarticles (1) and (2).

ARTICLE 7

Settlement of Disputes between

an Investor and a Party

(1) Any legal dispute between an investor of one Party and the other Party relating to an investment of the former which has not been amicably settled shall, after a period of six months from written notification of a claim, be submitted to international arbitration if the investor concerned so wishes.

(2) Where the dispute is referred to international arbitration, the investor and the Party concerned in the dispute may agree to refer the dispute either to -

(a) the International Centre for the Settlement of Investment Disputes (ICSID) established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington

DC on 18 March 1965, when each Party has become a party to said Convention:

As long as this requirement is not met, each Party agrees that the dispute may be settled under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of ICSID; or

(b) an international arbitrator or ad hoc arbitration tribunal to be established by agreement between the parties to the dispute.

(3) If after a period of three months from written notification of the investor's decision to refer the dispute to international arbitration there is no agreement on one of the alternative procedures referred to in sub-article (2), the dispute shall, at the request in writing of the investor concerned, be dealt with in terms of the procedure preferred by the investor.

(4) The award made by the arbitrator concerned in terms of sub-article (2) or (3) shall be binding on the parties to the dispute. Each Party shall give effect to the award in terms of its domestic law.

ARTICLE 8

Disputes between the Parties

(1) Any dispute between the Parties concerning the interpretation or application of this Agreement should, if possible, be settled through negotiations between the two Parties.

(2) If the dispute cannot thus be settled within a period of sixth months, following the date on which such negotiations were requested by either Party, it shall upon the request of either 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 months of the receipt of the request for arbitration, each 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 Parties shall be appointed Chairman of the tribunal. The Chairman shall

be appointed within two months from the date of appointment of the other two members.

(4) If within the periods specified in sub-article (3) the necessary appointments have not been made, either Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Party or is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Party or also 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 Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall reach its decision by a majority of votes in accordance with this Agreement and the principles of international law.

(6) Such decision shall be binding on both Parties. Each Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining cost shall be borne in equal parts by the Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the Parties.

(7) The tribunal shall determine its own procedures, unless the Parties agree otherwise.

ARTICLE 9

Subrogation

If a 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 Party, the latter Party shall recognise the assignment, whether by law or by legal transaction, to the former Party of all the rights and claims of the indemnified investor, and shall recognize that the former Party or its designate agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the original investor.

ARTICLE 10

Application of other Rules

(1) If the domestic law of either Party or obligations under international law existing at present or established hereafter between the Parties in addition to this Agreement contain rules, whether general or specific, entitling investments and returns of investors of the other Party to treatment more favourable than is provided for by this Agreement, such rules shall to the extent that they are more favourable prevail over this Agreement.

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

ARTICLE 11

Scope of the Agreement

This Agreement shall apply to all investment, whether made before or after the date of entry into force of this Agreement, but shall not apply to any dispute or claims which arose before the entry into force of this Agreement.

ARTICLE 12

Final Clauses

(1) The 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.

(2) This Agreement shall remain in force for a period of ten years, where after it shall continue in force until the expiration of twelve months from the date on which either Party shall have given written notice of termination to the other.

(3) In respect of investments made prior to the date when the notice of termination becomes effective, the provisions of Articles 1 to 11 shall remain in force for a further period of ten years from that date.

(4) The terms of this agreement may amended by negotiated agreement between the Parties, and any such amendments shall be effected by the Exchange of Notes between them.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective governments, have signed and sealed this Agreement in two originals in the English and Arabic languages, both texts being equally authentic. In the event of any divergence, the English text shall prevail.

DONE in Sanaa on this.....day of .....2003.

..... **Aziz Pahad, MP** **Deputy Minister: Foreign Affairs**	..... **Abdulkareem M. Muttair** **President of General Investment Authority**
FOR THE GOVERNMENT OF **THE REPUBLIC OF SOUTH AFRICA**	**FOR THE GOVERNMENT OF** **THE REPUBLIC OF YEMEN**

Protocol to the Agreement

between

the Government of the

Republic of South Africa

and

the Government of Republic of Yemen

for the Promotion and Reciprocal Protection of Investments.

On the signing of the Agreement between the Government of the Republic of South Africa and the Government of the Republic of Yemen for the Reciprocal Promotion and Protection of Investments, the undersigned representatives have, in addition, agreed on the following provisions, which shall constitute an integral part of the Agreement:

1. Ad Article 6 (in relation to Article 6)

a. Foreign nationals who have resided in the Republic of South Africa for more than five years and who have completed the required exchange control formalities connected with immigration to South Africa, are, in terms of South African exchange control rules, deemed to have become permanently resident in the Republic of South Africa and the provisions for transfers of investments and returns as contemplated in Article 6 shall not apply in their favour.

b. The exemptions to Article 6 as contemplated in paragraph 1 of this Protocol shall terminate automatically in respect of each restriction, upon removal of the relevant restriction as part of the domestic law of South Africa.

c. The Republic of South Africa shall make every effort to remove the said restrictions from their domestic law as soon as possible.

d. Paragraph 1 of this Protocol shall not apply to or restrict the transfer of compensation payments made pursuant to Articles 4 and 5 of this Agreement.

e. This Protocol shall enter into force at the same time as the Agreement.

2. Rights or permits conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources are subjected to special agreements governed by the two Parties.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective governments, have signed and sealed this Protocol in two originals in the English and Arabic languages, [all/both] texts being equally authentic. In the event of any divergence, the English texts shall prevail.

DONE in Sanaa on this...28th day of JANUARY 2003.

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Aziz Pahad, MP	**Abdulkareem M. Muttair**
Deputy Minister: Foreign Affairs	**President of General Investment Authority**
FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA	**FOR THE GOVERNMENT OF THE REPUBLIC OF YEMEN**