



**AGREEMENT  
BETWEEN**

**THE GOVERNMENT OF  
THE REPUBLIC OF SOUTH AFRICA  
AND  
THE GOVERNMENT OF  
THE REPUBLIC OF SENEGAL**

**FOR  
THE PROMOTION AND  
RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the Republic of South Africa and the Government of the Republic of Senegal, (hereinafter referred to as the "Contracting Parties");

**DESIRING** to create favourable conditions for the setting up of large firms by the investors of one of the Contracting Parties within the territory of the other Contracting Party; and

**CONSIDERING** that the encouragement and reciprocal protection of such investments by means of an international agreement could contribute to the stimulation of the initiatives of private companies and to increasing prosperity in the territories of the Contracting Parties;

**AGREE** as follows:

A handwritten signature in black ink, appearing to be 'J. J. J.' or similar, located at the bottom left of the page.

Handwritten initials 'DMH' in black ink, located at the bottom right of the page.

**ARTICLE 1**  
**Definitions**

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

(a) "**investment**" means any type of asset and in particular, though not exclusively, includes:

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

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

(iii) financial claims or any other contractual performance having an economic value;

(iv) intellectual property rights, in particular copyrights, licences, utility model licences, registered designs, trade-marks, corporate names, business and trade secrets, technical processes, know-how and good faith;

(v) rights or licences conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;

(b) "**returns**" means the amounts yielded by an investment and includes in particular, though not only profit, interest, earnings on capital, dividends, royalties and fees;

(c) "**investor**" means in respect to either Contracting Party:

(i) the "citizens", i.e. natural persons deriving their status as citizens of one of the Contracting Parties in accordance with the law of the said Contracting Party; and

(ii) the "companies", i.e. any legal person, corporate body, firm or association incorporated or constituted in accordance with the law of the said Contracting Party;

(d) "**territory**" means the territory of one of the Contracting Parties, including its territorial sea and any maritime area situated beyond the territorial sea of the said Contracting Party which, in accordance with international law, has been or might in future be designated as an area within which the Contracting Party can exercise rights of sovereignty and jurisdiction.

(2) Any change in the form in which assets have been invested does not affect their character as investments.

**ARTICLE 2**  
**Promotion of investments**

(1) Each Contracting Party shall, in accordance with its general policy regarding foreign investment, encourage investments in its territory by investors of the other Contracting

Party, and, by virtue of the right to exercise the powers conferred on it by its laws, to admit the said investments.

(2) Each Contracting Party shall, in accordance with its laws, grant any authorisation required both for the realisation of the said investments and the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance.

(3) In order to create more favourable conditions for assessing the financial position and results of activities related to investments in the territory of a Contracting Party, that Contracting Party shall - notwithstanding its own requirements for bookkeeping and auditing - permit the investment to be subject also to bookkeeping and auditing according to the national requirements of the investor or to principles accepted at the international level (such as International Accountancy Standards drawn up by the International Accountancy Standards Committee (IASA)). The results of such accountancy or audit shall be freely transferred to the investor.

### **ARTICLE 3** **Treatment of Investments**

(1) The investments and returns of investors of each of the Contracting Parties shall at all times be accorded fair and equitable treatment and full protection in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by discriminatory or unreasonable measures the management, maintenance, use, enjoyment or disposal in its territory of investments of the investors of the other Contracting Party.

(2) Each Contracting 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 the investments and returns of its own investors or to the investments and returns of a third State.

(3) Each Contracting 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 a third State.

(4) The provisions in paragraphs (2) and (3) above shall not be construed so as to oblige one of the Contracting Parties 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, 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 any domestic legislation relating wholly or mainly to taxation.

(5) If one of the Contracting Parties accords special privileges to development finance institutions with foreign participation and established for the exclusive purpose of development assistance through nonprofit activities, that Contracting Party shall not be obliged to accord similar privileges to development finance institutions or other investors of the other Party.

**ARTICLE 4**  
**Compensation for Losses**

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

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

(a) requisitioning of their property by the armed forces or authorities of the other Contracting Party, or

(b) destruction of their property by the armed forces or authorities of the other Contracting Party, which did not take place during hostilities or was not required by the necessity of the situation,

shall be accorded restitution or adequate compensation.

**ARTICLE 5**  
**Expropriation**

(1) Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effects equivalent to nationalisation or expropriation (herein referred to as "expropriation") in the territory of the other Contracting Party except for public purposes complying with an appropriate legal procedure, on a nondiscriminatory basis and against prompt, adequate and effective compensation. The compensation shall be equivalent to at least the market value of the investments expropriated immediately before the expropriation or before the impending expropriation became public knowledge. It shall include interest at a normal commercial rate until the date of payment. It shall be made without delay and be effectively realisable.

(2) The investor affected by the expropriation shall have the right, under the law of the Contracting Party making the expropriation, to prompt review of his case and the valuation of his investments by a court of law or any other independent forum of that Contracting Party, in accordance with the principles referred to in paragraph (1).

**ARTICLE 6**  
**Transfer of Investments and Returns**

(1) Subject to its law, each Contracting Party shall allow investors of the other Contracting Party the free transfer of payments relating to their investments and returns, including compensation paid in accordance with 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

new investments in the country by foreign investors or the most recent exchange rate applied for the conversion of currencies into Special Drawing Rights, whichever is the more favourable to the investor.

(3) Transfers shall be done in accordance with the laws pertaining thereto. Such laws shall not, however, regarding the requirements or the application thereof, impair or derogate from the principle of free and undelayed transfer stipulated in paragraphs (1) and (2).

#### **ARTICLE 7**

##### **Settlement of Disputes between an Investor and a Contracting Party**

(1) Any legal dispute between an investor of one Contracting Party and the other Contracting Party relating to an investment of the former which has not been amicably settled shall, after a period of six months from 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 Contracting Party concerned 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 in Washington DC on 18 March 1965, if both Contracting Parties have become members of the aforesaid convention.

In the event of this requirement not being met, each Contracting Party agrees that the dispute may be settled under the rules of the Additional Facility for the Administration of Proceedings by the Secretariat of ICSID; or

(b) an international arbitrator or ad hoc international arbitration tribunal to be established by special agreement or under the Arbitration Rules of the United Nations Commission on International Commercial Law.

(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 paragraph (2), the dispute shall, at the request of the investor concerned, be dealt with in accordance with the procedure preferred by the investor.

(4) The decision made by the arbitrator in terms of paragraphs (2) and (3) shall be binding on the parties to the dispute. Each Contracting Party shall give effect to the decision in accordance with its national law.

#### **ARTICLE 8**

##### **Disputes between the Contracting Parties**

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

(2) If the dispute cannot thus be settled within a period of six months from the date on which negotiations were requested by one of the Contracting Parties, it shall upon the

request of one of the Parties 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 Contracting Party shall appoint one member of the tribunal. The two members of the tribunal 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 of the tribunal shall be appointed within two months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the aforesaid appointments. If the President is a national of either Contracting Party or if he 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 Contracting Party or if he too 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 Contracting Party shall be invited to make the necessary arrangements.

(5) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and its representation in the arbitral proceedings; the cost of the Chairman and the remaining cost shall be borne in equal parts by the two Contracting Parties. The tribunal may, however, in its decision, direct that a higher proportion of the costs shall be borne by one of the Contracting Parties, and such decision shall be open to objection by both Contracting Parties. The tribunal shall determine its own procedure.

#### **ARTICLE 9 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 assignment, whether by law or by legal transaction, to the former Contracting Party of 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.

#### **ARTICLE 10 Application of other Rules**

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

(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**  
**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 which arose before entry into force of this Agreement.

**ARTICLE 12**  
**Final Clauses**

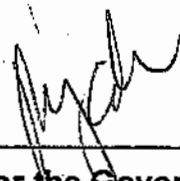
(1) The Contracting Parties shall notify each other when their respective constitutional requirements for entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the date of receipt of the last notification by either Contracting Party.

(2) This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force for twelve months from the date of receipt by one of the Contracting Parties of the notice of termination by the other Contracting Party.

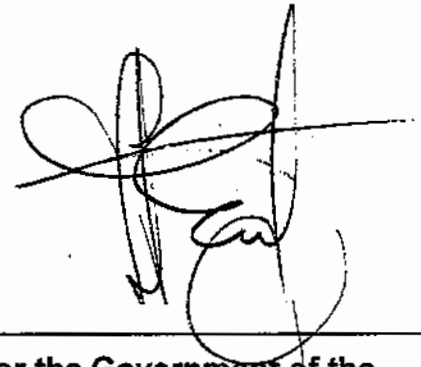
(3) In respect of investments made prior to the date when the notice of termination becomes effective, the provisions of articles 1 to 11 remain in force with respect to such investments for a further period of twenty years from that date.

**In witness whereof** the undersigned, duly authorised thereto, have signed this Agreement.

Done in duplicate at <sup>160</sup> ~~Dakar~~ <sup>JUIN 1998</sup> this ..... day of .....  
19.... in the English and French languages, both texts being equally authentic.



**For the Government of the  
Republic of South Africa**



**For the Government of the  
Republic of Senegal**