



BILATERAL AGREEMENT

BETWEEN

THE REPUBLIC OF SOUTH AFRICA

AND

THE REPUBLIC OF TUNISIA

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

PREAMBLE

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

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

HEREBY AGREE as follows:

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ARTICLE 1 Definitions

In this Agreement, unless the context indicates otherwise -

"investment" means every kind of asset constituted or recognized in the territory of a Contracting Party according to its laws and regulations and in particular, though not exclusively, includes-

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

(b) shares in and stocks and debentures of a company and any other form of participation in a company;

(c) claims to money, or to any performance under contract having an economic value;

(d) intellectual property rights, in particular copyrights, patents, registered designs, trade-marks, trade-names, trade and business secrets, technical processes, know-how, and goodwill;

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

and any change in the form in which assets are invested or reinvested does not affect their character as investments under this Agreement, on condition that this alteration shall be in accordance with laws and regulations of the host Contracting Party;

"investor" means in respect of either Contracting Party-

(a) natural persons having the nationality of a Contracting Party in accordance with the law of that Contracting Party; and

(b) any legal person, corporation, firm or association incorporated or constituted in accordance with the law of that Contracting Party;

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

"territory" means the territory of a Contracting Party, including the territorial sea, air space and any maritime area over which the

Contracting Party may exercise sovereign rights or jurisdiction in accordance with international law.

ARTICLE 2

Promotion of Investments

(1) Each Contracting Party shall, subject to its general policy in the field of investment, encourage investments in its territory by investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

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

ARTICLE 3

Treatment of Investments

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

(2) Each Contracting Party shall in its territory accord to investments and returns of investors of the other Contracting 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 Contracting Party shall in its territory accord to investors of the other Contracting 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 subarticles (2) and (3) 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, free trade area, common market, any similar international agreement or any interim arrangement leading up to such customs union, free trade area,

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common market or any other form of regional economic organisation 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.

(c) any law or other measure 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 Contracting 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 Contracting Party shall endeavour to accord such advantages to development finance institutions with foreign participation of the other Contracting Party established for the same exclusive purpose but shall not extend such advantages to other investors of the other Contracting Party.

ARTICLE 4

Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting 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 Contracting Party shall be accorded by 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.

ARTICLE 5

Compensation for 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 (hereinafter referred to as "expropriation") in the territory of the other Contracting 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, shall be made without delay, and be effectively realizable and shall include fair compensation for any delay in payment caused by the

Contracting Party.

(2) The investor affected by the expropriation shall have a right, under the laws and regulations of the country of the Contracting Party making the expropriation, to prompt review, by the appropriate judicial or administrative authorities of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles referred to in subarticle (1).

ARTICLE 6

Transfers of Investments and Returns

(1) Each Contracting Party shall ensure to investors of the other Contracting Party the free transfer of payments in connection with investments and returns. Such payments shall include in particular, though not exclusively-

- (a) the principal and additional amounts to maintain, develop or increase the investment;
- (b) returns;
- (c) proceeds obtained from the total or partial sale or disposal of investment, including the sale of shares;
- (d) the amounts required for payment of expenses which arise from the operation of the investment, such as loans, repayments of royalties, management fees, licence fees or other similar expenses;
- (e) compensation payable pursuant to Articles 4 and 5;
- (f) payments arising out of the settlement of a dispute;
- (g) the maximum amount of earnings or remuneration of personnel engaged from abroad working in connection with an investment permitted by the prevailing laws and regulations of the host Contracting Party.

(2) The Contracting Parties shall further ensure that transfers referred to in subarticle 1 of this Article shall be made without any restriction or delay, in a freely convertible currency and at the prevailing market rate of exchange applicable on the date of transfer and shall be effectively realisable and immediately transferable.

(3) The free transfer must conform to the legal procedures of currency transfer of the country concerned. Such procedures must not impair or derogate from the free and undelayed transfer allowed in terms of subarticles (1) and (2).

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