



**AGREEMENT  
BETWEEN  
THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA  
AND  
THE GOVERNMENT OF THE ARGENTINE REPUBLIC  
ON THE  
PROMOTION AND RECIPROCAL PROTECTION OF  
INVESTMENTS**

The Government of the Republic of South Africa and the Government of the Argentine Republic, (hereinafter jointly referred to as the "Parties", and in the singular as a "Party");

Desiring to intensify economic cooperation between both States,

Aiming at creating favourable conditions for investments by investors of one Party in the territory of the other Party,

Recognising that the promotion and protection of such investments on the basis of an agreement will stimulate individual business initiative and will increase prosperity in both States,

Hereby agree as follows:

## ARTICLE 1 Definitions

In this Agreement:

"investment" means, subject to the domestic law of the Party in whose territory the investment is made, every kind of asset invested by an investor of the other Party in the territory of the first mentioned Party, subject to the laws and regulations of the latter, and includes in particular, though not exclusively:

- (a) Movable and immovable property as well as any other property rights, such as mortgages, liens and pledges;
- (b) shares, stocks and any other kind of participation in companies;
- (c) title to money and claims to performance having an economic value; loans only being included when they are directly related to a specific investment;
- (d) intellectual property rights including in particular copyrights, patents, industrial designs, trademarks, trade names, technical processes, know-how and goodwill;
- (e) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

Any alteration in the legal form under which the assets have been invested or reinvested shall not affect their qualification as investments according to this Agreement.

“investor” means:

- (a) any natural person who is a national of a Party in accordance with its laws;
- (b) any legal person constituted in accordance with the law of a Party and having its seat in the territory of that Party.

“returns” means all amounts yielded by an investment such as profits, dividends, interest, royalties and other current incomes, as well as capital gains.

“territory” means the national territory of either Party including those maritime areas adjacent to the outer limit of the territorial sea of the national territory, over which the Party concerned may, in accordance with international law, exercise sovereign rights or jurisdiction.

## ARTICLE 2

### Promotion of investments

1. Each Party shall promote in its territory investments by investors of the other Party and shall admit such investments subject to its law.
2. Each Party shall grant, subject to its 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. The nationals of each Party and the employees, and their families, of an investor of one Party, shall, subject to the law of the other Party, be permitted to enter into, remain in and leave the country of the last named Party, for the purpose of carrying out activities with regard to investments in the territory of that Party.

## ARTICLE 3

### Protection of investments

1. Each Party shall at all times ensure fair and equitable treatment of the investments by investors of the other Party and shall not impair the management, maintenance, use, enjoyment or disposal thereof through unjustified or discriminatory measures.
2. Each Party, once it has admitted investments in its territory by investors of the other Party, shall grant full legal protection to such investments and shall accord

them treatment which is no less favourable than that accorded to investments by its own investors or by investors of third States.

3. Notwithstanding the provisions of Paragraph (2) of this Article, the treatment of the most favoured nation shall not apply to privileges which either Party accords to investors of a third State because of its membership in, or association with a free trade area, customs union, common market or regional agreement.
4. The provisions of Paragraph (2) of this Article shall not be construed so as to oblige one Party to extend to investors of the other Party the benefit of any treatment, preference or privilege resulting from an international agreement relating wholly or mainly to taxation.

#### ARTICLE 4

##### Expropriation and compensation

1. Neither of the Contracting Parties shall take any measure of nationalization or expropriation or any other measure having the same effect against investments in its territory belonging to investors of the other Party, unless the measures are taken in the public interest, on a non discriminatory basis, under due process of law and accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the expropriated investment immediately before the expropriation or before the impending expropriation became public knowledge, shall include interest from the date of expropriation at a normal commercial rate, shall be paid without delay and shall be effectively realizable and freely transferable.
2. Investors of one Party who suffer losses of their investments in the territory of the other Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification, compensation or other settlement, treatment which is no less favourable than that accorded to its own investors or to investors of any third state.

#### ARTICLE 5

##### Transfers

1. Each Party shall grant to investors of the other Party the unrestricted transfer of investments and returns and in particular, though not exclusively, of -
  - (a) the capital and additional sums necessary for the maintenance and development of the investments;
  - (b) gains, profits, interests, dividends and other current income;

- (c) funds in repayment of loans that are directly related to a specific investment;
  - (d) royalties and fees;
  - (e) the proceeds from a total or partial sale or liquidation of an investment;
  - (f) compensations provided for in Article 4;
  - (g) the net earnings of nationals of one Party who are allowed to work in connection with an investment in the territory of the other Party.
2. Transfers shall be effected without delay in a freely convertible currency, at the normal applicable exchange rate at the date of the transfer, in accordance with the procedures established by the Party in whose territory the investment was made, which shall not impair the substance of the rights set forth in this Article. In the absence of a free market for foreign exchange, such exchange rates shall not differ more than marginally from the cross rate of the exchange rates the International Monetary Fund (IMF) would apply on the date the transfer is made, if it exchanges the money of the countries concerned for Special Drawing Rights (SDR).

#### ARTICLE 6 Subrogation

1. If a Party or its designated agency makes a payment to any of its investors under a guarantee or insurance it has contracted in respect of an investment, the other Party shall recognize the validity of the subrogation in favour of the former Party or its designated agency to any right or title held by the investor. The Party or its designated agency shall, within the limits of subrogation, be entitled to exercise the same rights which the investor would have been entitled to exercise.
2. In the case of subrogation as defined in paragraph (1) above, the investor shall not pursue a claim unless authorized to do so by the Party or its designated agency.

#### ARTICLE 7 Application of other rules

If the provisions of law of either Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement or if any agreement between an investor of one Party and the other Party contain rules, whether general or specific entitling investments by investors of the other Party to treatment more favourable than is provided for in the present Agreement, such rules shall, to the extent that they are more favourable, prevail over the present Agreement.

## ARTICLE 8

### Settlement of Disputes between the Parties

1. Disputes between the Parties concerning the interpretation or application of this Agreement should, if possible, be settled through the diplomatic channel.
2. If a dispute between the Parties cannot thus be settled within six months from the beginning of the negotiation, it shall upon the request of either Contacting 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 paragraph 3 of this Article 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 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 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 Party shall be invited to make the necessary appointments.
5. The arbitral tribunal shall reach its decision by a majority of votes. 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 costs shall in principle 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 two Parties, and this award shall be binding on both Parties. The tribunal shall determine its own procedure.

## ARTICLE 9

### Settlement of Disputes between an investor and the host Party

1. Any dispute which arises between a Party and an investor of the other Party in terms of this Agreement shall be settled amicably if possible.
2. If the dispute cannot be settled amicably within six months following the date on which the dispute has been raised by either party, it may be submitted, upon

request of the investor, either to:

- the competent tribunal of the Party in whose territory the investment was made; or
- international arbitration according to the provisions of paragraph 3.

Where an investor has submitted a dispute to the aforementioned competent tribunal of the Party where the investment has been made or to international arbitration, this choice shall be final.

3. If a dispute is to be settled by international arbitration, the dispute shall be submitted, at the investor's choice, either to -
  - the International Centre for the Settlement of Investment Disputes (ICSID) created by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, once both Parties herein become members thereof. As far as this provision is not complied with, each Party consents that the dispute be submitted to arbitration under the regulations of the ICSID Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings, or
  - an arbitration tribunal set up from case to case in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).
4. The arbitration tribunal shall act in accordance with the provisions of this Agreement, the law of the Party involved in the dispute, including its rules on conflict of law, the terms of any specific agreement concluded in relation to such an investment and the relevant principles of international law.
5. The arbitral decision shall be final and binding on the parties to the dispute. Each Party shall execute such decisions in accordance with its law.

## ARTICLE 10

### Scope of the Agreement

This Agreement shall apply to all investments, whether made before or after the date of entry into force of this Agreement, but the provisions of this Agreement shall not apply to any dispute, claim or difference which arose before its entry into force.

ARTICLE 11

Entry into force, duration, and termination

1. This Agreement shall enter into force on the first day of the second month following the date on which the Parties notify each other in writing that their constitutional requirements for the entry into force of this Agreement have been fulfilled. It shall remain in force for a period of 10 years. Thereafter it shall remain in force until the expiration of twelve months from the date that either Party in writing notifies the other Party of its decision to terminate this Agreement.
  
2. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 9 shall remain in force for a further period of fifteen years from that date.

In witness whereof the undersigned have signed and sealed this Agreement in two originals, in the English and Spanish languages, both being equally authentic.

Done at Buenos Aires, on July 23, 1998.

FOR THE REPUBLIC OF SOUTH AFRICA

FOR THE ARGENTINE REPUBLIC

  
NELSON MANDELA

  
CARLOS SAUL MENEM



## PROTOCOL

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

I. With reference to Article 1, Paragraph 1:

The provisions of this Agreement shall not apply to the investments made by natural persons who are nationals of the Republic of South Africa in the territory of the Argentine Republic if such persons have, at the time of the investment, been domiciled in the Argentine Republic for more than two years, unless it is proved that the investment was admitted into its territory from abroad.

II. With reference to Article 4 Paragraphs 1 and 5:

The provisions of this Agreement relating to transfers shall not apply to nationals of the Argentine Republic who have obtained permanent residence in the Republic of South Africa and who have decided to immigrate to the Republic of South Africa, by completing the required exchange control form, once a five-year period from the date of immigration has lapsed.

This provision shall terminate upon removal of the relevant exchange control limitations by the Republic of South Africa.

III. With reference to Article 3:

- (i) The provisions of Paragraph 2 of Article 3 shall neither be construed so as to extend to investors of the Republic of South Africa the benefit of any treatment, preference or privilege resulting from the bilateral agreements providing for concessional financing concluded by the Argentine Republic with the Republic of Italy on 10 December 1987 and with the Kingdom of Spain on 3 June 1988.
- (ii) If the Republic of South Africa accords special advantages to development finance institutions with foreign participation and established for the exclusive purpose of development assistance though mainly nonprofit activities, the Republic of South Africa shall not be obliged to accord such advantages to other development finance institutions or to investors of the Argentine Republic.

IV 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 bookkeeping and auditing - permit the investment to be subject also to bookkeeping and auditing according

to standards which the investor is subjected to by his national requirements or according to internationally accepted standards (eg. International Accountancy Standards -IAS-) drawn up by the International Accountancy Standards Committee -IASC-). The result of such accountancy and audit shall be freely transferable to the investor.

In witness whereof the undersigned have signed this Protocol in two originals, in the English and Spanish languages, both being equally authentic.

Done at Buenos Aires, on July 23, 1998.

FOR THE REPUBLIC OF SOUTH AFRICA

FOR THE ARGENTINE REPUBLIC

  
NELSON MANDELA

  
CARLOS SAUL MENEM